Supreme Court, U.S.
FILED

NO. 04-1288 MAR 24 2005

OFFICE OF THE CLERK

In The Supreme Court of the United States

NGOC NU TRINH,

Petitioner,

v.

MEDTRONIC, INC., A MINNESOTA CORPORATION, AND RAMON PAZ, AN INDIVIDUAL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The first question for review is whether the appellate court has so far departed from the accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by the lower court, in failing to hold a hearing on the issue of the formation of a settlement agreement between the parties to the litigation upon Plaintiff's Rule 59, Fed. R. Civ. P. motion to re-open a case dismissed for failure to abide by the District Court's order to submit settlement papers.

The second question is whether the appellate court has so far departed from the accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by the lower court, in dismissing an appeal, first lodged with the express order of the district court extending the time for bringing an appeal, following limited remand to the district court which then vacated its own order allowing a late-filed appeal, having reached the clearly erroneous conclusion that a party's consultation of the PACER system to access the federal courts' dockets is the equivalent of "notice" of a judgment or order under Rule 4(a)(6) of the Federal Rules Appellate Procedure.

PARTIES TO THE PROCEEDING

The petitioner in this case is Ngoc Nu Trinh, n/k/a Helen Trinh, individually. The respondents are Medtronic, Inc. and Ramon Paz.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, *pro se*[1], hereby petitions this Honorable Court for Writ of Certiorari, in compliance with the timing and other requirements of Sup. Ct. R. 14, 29, 33 and 34 on the grounds of a conflict by default of the Eleventh Circuit with the jurisprudence of the Eighth Circuit, and further, that in rendering its decision on the basis of a clearly erroneous conclusion on limited remand to the District Court and thereafter dismissing the appeal, the United States Court of Appeals for the Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by the lower court, as to call for an exercise of this Court's power of supervision.

Further, while no case is pending in a federal court of appeals, the underlying elements of this case, as to whether a settlement was reached, and whether the District Court followed the accepted and usual course of judicial proceedings in failing to hold a hearing on the existence *vel non* of a settlement agreement, alleged to have been reached in mediation conducted by and before a United States Magistrate Judge, upon Plaintiff's Verified Pro Se Motion for Relief, etc.; See Appendix A-27.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Eleventh Circuit are reported at 71 Feb. Appx. 824 and 62 Fed. Appx. 919.

[1] Prepared with assistance of counsel

JURISDICTION

The judgment of the court of Appeals was entered on November 30, 2004 following the Appellant's Suggestion of Hearing En Banc construed as a motion for reconsideration of the Court's was denied. This Court's jurisdiction rests on 28 U.S.C § 1254(1).

RULES INVOLVED

The pertinent provisions of the Federal Rule of Civil Procedure 59 are set forth at page A-18 of the appendix to this petition. The pertinent provisions of the Federal Rule of Civil Procedure 60(b) are set forth at page A-19 of the appendix to this petition. The pertinent provision of the Federal Rule of Appellate Procedure 4(a)(b) are set forth at page A-21 of the appendix to this petition.

STATEMENT OF THE CASE

The case originated as a Title VII action for discrimination in the workplace. During the course of the underlying litigation, a mediation before the U.S. Magistrate Judge was ordered and held. Thereafter, the Magistrate Judge conveyed to the District Judge a settlement, whereupon the District Court entered an order requiring submission of settlement papers. After granting several enlargements of time on motion of Plaintiff, when Plaintiff failed to submit settlement papers, the District Court dismissed the case for failure to abide by the Court's order. An appeal followed, affirmed by the Eleventh Circuit as falling within discretion of the court to dismiss a cause for failure to abide by the court's order. Rehearing en banc was denied.

Thereafter, Plaintiff filed a verified motion *pro se* for relief pursuant to Rule 59, Fed.R.Civ.P., seeking to re-open the

case, on the grounds that no settlement had been reached in fact or in law between the parties to the Title VII litigation, and that the dismissal of Plaintiff's cause worked an inequitable hardship on Plaintiff, since the state law precluded recognition of a settlement on these facts, barring a cause of action to enforce any settlement, and likewise, Plaintiff's action in the federal forum stood dismissed with prejudice, with no jurisdictional basis to seek enforcement of the "settlement" before a United States District Court.

The United States Magistrate Judge who had overseen the mediation where the controversial "settlement" had been conveyed to the District Judge, was called upon to rule on Plaintiff's verified *pro se* motion to re-open, and without receiving any evidence on the issue of the existence of the settlement agreement, recommended that the motion be denied. At the hearing, Plaintiff's former counsel was permitted to withdraw, and new counsel appeared for Plaintiff, which counsel thereafter objected to the Magistrate Judge's recommendation. Notwithstanding, the District Court followed the recommendation and ordered the motion to re-open denied, however, this order was never communicated to either Plaintiff or to Plaintiff's new counsel.

After some time, Plaintiff's counsel consulted the PACER Internet docket access system, learned of the entry of the order, and moved the district court to re-open the time for Plaintiff to appeal the order. This order was granted, and Plaintiff appealed. The Eleventh Circuit Court of Appeal initially dismissed the appeal, for having been late filed on the basis of the date of the order appealed from. Upon Plaintiff's motion for reconsideration of such dismissal, the Court of Appeals retained jurisdiction in order to make a limited remand to the lower court to determine whether Plaintiff had met the requirements of Rule 4(a)(6), Fed.R.App.P, in order to file the appeal. On the limited remand, although Plaintiff showed that

neither the Clerk of Court, nor any opposing party had given notice of the order, the District Court vacated its prior order, equating consultation of the PACER system to a giving of notice by the Clerk or an opposing party. On this basis, the appellate court dismissed the appeal, and later denied a motion for en banc rehearing, construed as a motion for reconsideration. This Petition for Writ of Certiorari followed.

FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED

In the court of first instance, the claim was brought under federal question jurisdiction, i.e., in this case, under Title VII for discrimination in the workplace. The facts material to consideration of the questions presented for review arise from the mediation process.

The following contain statements of facts material to consideration of, respectively, the first and second questions presented for review.

FACTS MATERIAL TO CONSIDERATION OF THE FIRST QUESTION PRESENTED

The action below was dismissed at first instance for failure to abide by an order to file settlement papers, although no settlement had been agreed. (See below, Facts Material to Consideration of the Second Question Presented, for further details on the "settlement" issue). An appeal followed, affirming the dismissal as being within the District's Court discretion to dismiss for failure to abide by one of the court's orders.

Appellant as Plaintiff, below, had sought by motion before the trial court to reopen the 30-day period for filing an appeal, showing as excusable neglect the grounds that

undersigned counsel, as Appellant's new counsel, had never received a copy of the order from which appeal was sought so as to timely file the appeal, having discovered entry of the order through docket review over the PACER system.

Although beyond the 30 day period referenced in Rule 4, Fed.R.App.P., the trial court granted the motion on the basis of the circumstances which, inferentially constituted excusable neglect, and which did not otherwise permit a timely appeal, wholly inadvertently and without any cause for delay by the Plaintiff-Appellant. The trial court's order granting the motion and allowing for a re-opening or a granting of a renewed 30-day period for filing appeal has been attached See Appendix, A-15.

FACTS MATERIAL TO CONSIDERATION OF THE SECOND QUESTION PRESENTED

The plaintiff attended a mediation session held before the United States Magistrate Judge named for cases assigned to the presiding District Judge. Apparently, the U.S. Magistrate Judge conveyed to the District Judge that a settlement had been reached, whereupon the District Court entered an order requiring that settlement papers be filed with the court within 10 days. In fact, no settlement had been reached, which became apparent, too, by Plaintiff's then-counsel filing a series of motions for enlargement of time to file such settlement papers.

Although Plaintiff's then-counsel failed to file still another motion for enlargement of time, neither did Plaintiff's counsel at the time file any papers before the court to the effect that, in fact, no settlement agreement had been concluded by the parties. Consequently, the district court dismissed the case for failure to abide by the order requiring submission of settlement papers. An appeal to the Eleventh Circuit Court of

Appeal affirmed, having determined that it was within the discretion of the District Court to dismiss a cause for failure to abide by the court's order.

Thereafter, Plaintiff sought to re-open the case, moving under Rule 59, Fed.R.App.Pro. for relief to the effect that, both in fact and in law, no settlement agreement had been concluded that the state court would take cognizance of, and so the district court's order of dismissal worked an inequitable hardship upon the Plaintiff. Plaintiff further relied on case law from the United States Court of Appeals for the Eighth Circuit Court of Appeals[2] holding that the District Court would be in error if it failed to hold an evidentiary hearing on the issue of the existence, or not, of the settlement agreement under like circumstances where the parties dispute the formation of the settlement agreement.

The District Court below appointed to rule upon the Plaintiff's verified motion to re-open the case the same U. S. Magistrate Judge who had overseen the mediation which gave rise to the matters raised herein. The Magistrate Judge ordered and conducted a hearing, at which new counsel appeared for Plaintiff, but declined to receive the evidence proffered by the Plaintiff herself that she had not agreed or accepted a settlement of her case on that day in mediation before the Magistrate Judge. The Defendant's proffered no evidence at the hearing, and none was received. The only evidence of record on the issue of the existence of the settlement, *vel non*, was the sworn statement of the Plaintiff contained in her *pro se* Motion to Re-Open her case. Appendix A-27.

The Magistrate Judge recommended that the District Court deny the motion, and decline to re-open the case.

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[2] Sheng v. Starkey Laboratories, Inc., 53 F.3d 192 (8th Cir. 1995)

Plaintiff, through new counsel, objected to the Report and Recommendation. Although the District Court entered its order in accord with the Magistrate Judge's Report and Recommendation, neither Plaintiff, nor Plaintiff's newly appeared counsel received a copy of that Order. Although Plaintiff's new counsel was not surprised at the delay in receiving an order on so complex an issue, at the urging of Plaintiff some months after the hearing, new counsel consulted the PACER system, and learned of the entry of an order within days of the Magistrate Judge's Report and Recommendation. Within a reasonably short time of such discovery, Plaintiff's new counsel moved the District Court to re-open the time for filing an appeal of that order, which was granted. [See also facts material to first question presented for review].

REASONS FOR GRANTING THE WRIT

FIRST QUESTION PRESENTED

The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by the lower court, as to call for an exercise of this Court's power of supervision, in dismissing the Plaintiff's appeal on the limited remand to District Court, where the District Court ignored the plain language of Appellate Rule 4(a)(6) in vacating its prior order allowing a late filed appeal, where the appealing party had never received a copy of the order to be appealed from, either from the clerk of court, or from an adverse party.

Under the rule governing the period within which appeal must be taken from judgment, the determination of what constitutes excusable neglect is within the discretion of the trial court. U.S. v. Ferrer, 613 F.2d 1188 (1st Cir 1980). The trial court at first exercised that discretion to allow the appeal.

Indeed, the trial court need not make an express finding of excusable neglect, but it can be inferred from the trial court's granting of the motion sought by the Appellant below, prior to filing her notice of appeal. See e.g., U.S. v. Gibson, 568 F.2d 111 (8th Cir. 1978).

Rule 4(a)(6), Fed.R.App.P., provides in pertinent part that:

> The district court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that not party would be prejudiced, may upon, motion filed within 180 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the day of entry of the order reopening the time for appeal.

In this case, the district court acted appropriately under the facts in first granting the Plaintiff leave to file a late-filed appeal, even though the district judge did not make a specific finding with respect to Rule 4(a)(6), cited above. Nonetheless, it is clear that the applicability of the rule called for the reopening of the time for appeal.

The district court in this case, without making specific findings, determined tacitly that the circumstances for reopening the appeal period were met. In effect, neither the Plaintiff/Appellant, nor Counsel, ever received notice of entry of the judgment as defined by the Rule itself. An analysis of the application of the Rule to the facts show this to be so.

One need not parse the rule too deeply to determine that the "Plaintiff" of record is "a party entitled to notice of the entry of a judgment or order..." thus meeting the very first part of the test one can extrapolate from Rule 4(a)(6). The receipt

of notice of the entry of the judgment or order must be "from the clerk or any party within 21 days of its entry". In this case, the Plaintiff has shown that Plaintiff, either directly or through counsel, never received notice of the entry of the judgment or order at any time from either the clerk, or from either of the defendants. Additionally, the February 27, 2004 order did not recite any copy furnished to the Plaintiff as pro se litigant.

This demonstrates that Plaintiff/ Appellant met the standard to apply for the relief made available by Rule 4(a)(6), Fed.R.App.P., i.e., to reopen the period for taking an appeal. Having met that standard, the party seeking to reopen the appeal must do so within the time constraints set out in the said rule, to writ, that party "may, upon motion filed within 180 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier, reopen the time for appeal".

In this case, the only applicable time period was the 180-day time period following entry of the judgment. This is so because the condition precedent for the 7 days time period never occurred. That is to say, the Plaintiff never received notice from the clerk or from any party of the entry of the judgment or order. Plaintiff's counsel having discovered the state of the file by reviewing the docket entries on the PACER system cannot be the same as receiving notice from the clerk or from any other party, as provided in the Rule of Appellate Procedure.

Further, there was no evidence or suggestion that this occurred at any time, either within or beyond the 21 days from entry of the judgment or order at issue on the Court of Appeals' Limited Remand to the District Court to determine whether Plaintiff met the requirements of Rule 4(a)(6), Fed.R.App.P.

Upon discovery, rather than receipt of the February 27, 2004 order, Plaintiff, through her counsel, acted diligently to seek relief from the Court. The Court granted that relief and Plaintiff thereupon acted, equally diligently, and in reliance on the District Court's order in bringing her appeal.

Where the Court of Appeals countenanced a departure by the District Court from the accepted and usual course of judicial proceedings in accepting the District Court's vacating of its prior order, in effect confusing the receipt of notice from the clerk or from any party, with the discovery on one's own after the fact, and thus coming to have knowledge of the existence of the Court's action as set forth in its written orders. At the very least, Plaintiff should have been allowed to have her appeal go forward on the question of the propriety of the District Court's failure to hold an evidentiary hearing on Plaintiff's charges that no settlement agreement had come into existence such as to justify the District Court's ordering settlement papers to be filed. To countenance the District Court's dismissal for failure to abide by such an order constitutes a much further departure still, calling for this Court's supervisory intervention.

SECOND QUESTION PRESENTED

Petitioner further petitions this court, that in rendering its decision on the basis of a clearly erroneous conclusion on limited remand to the District Court and thereafter dismissing the appeal, the United States Court of Appeals for the Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by the lower court, in failing to conduct an evidentiary hearing on Plaintiff's Pro Se Motion to Re-Open, etc.

On this issue, Petitioner/Plaintiff objects on the grounds that, although the Magistrate Judge conducted a hearing on Plaintiff's Verified Pro Se Motion for Relief, etc., the Court did not at that time conduct an evidentiary hearing to determine the existence *vel non* of a settlement agreement. This is notwithstanding the proffer of testimony by Plaintiff more than once in the course of the hearing so conducted. See Appendix A-75; A-81. In doing so, the Eleventh Circuit has created an implicit division among the circuits of the United States Court of Appeals, by failing to grant the evidentiary hearing that the Eighth Circuit has ruled is vital and necessary to a party's due process and right to be heard.

The Eighth Circuit has held that an evidentiary hearing had to be conducted, in connection with a motion for relief from a judgment, regarding the existence of a settlement agreement, where the existence of the settlement agreement was disputed and the dispute was highly relevant to the outcome of the motion. Sheng v. Starkey Laboratories, Inc., 53 F.3d 192 (8th Cir. 1995). That case should be of more than persuasive authority to the effect that the District Court's conduct of an evidentiary hearing was the legal minimum for proper determination of Petitioner's Motion for Relief in the case *sub judice*. As a consequence, if no settlement existed, there was an improper basis for the order of dismissal, based on a failure to submit settlement papers, based on an erroneous communication of the existence of a settlement agreement. It is analogous to what the constitutional law and jurisprudence has termed, in the context of criminal prosecutions, the "fruit of the poisonous tree." In like terms, once the settlement was erroneously communicated to the District Court, every action thereon by the District Court was the product of error.

In another case involving a doubtful settlement and motion under Rule 60(b), the Eighth Circuit wrote that:

> We do not say that an evidentiary hearing in connection with the Rule 60(b) motion would necessarily have done the plaintiff any good. However, to have held the hearing would have consumed little time and effort, and in ruling upon the motion [...] the district court would have had the benefit of all the facts, and we would have had the benefit of those facts in reviewing the action of the district court on appeal. In our opinion the action of the trial court in failing to hold a hearing legally amounted to an abuse of discretion, and we think that a hearing must now be held by the district court.

Clarke v. Burkle, 570 F.2d 824 (8th Cir. 1978).

Although a hearing was conducted by the Magistrate Judge, the hearing was not an evidentiary hearing, but was limited to argument of counsel. Consequently, there was no determination about whether the parties agreed to settle. In this regard, then, the Magistrate Judge should have conducted an evidentiary hearing, receiving the evidence proffered by Plaintiff, along with such evidence as the Defendant would adduce, in order to make a determination of the Plaintiff's pro se motion for relief. The determination as a matter of fact of the existence of settlement, or not, was and remains, essential to a proper determination of the Plaintiff's motion for relief on the basis that no cognizable settlement had been concluded between the parties.

Indeed, the only sworn evidence before the United States Court of Appeal on the Plaintiff's Verified Motion Pro See for Relief, etc. was the Verified Motion itself, to the effect, in its factual portion that the Plaintiff had not settled on that date when mediation was held. The Magistrate Judge came to an impermissible conclusion, given the lack of contrary evidence before the court of first instance. On theses grounds,

the United States Court of Appeals for the Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by the lower court, in failing to require the District Court to conduct an evidentiary hearing on Plaintiff Petitioner's Pro Se Verified Motion for Relief.

The uncontroverted evidence showed that Plaintiff communicated her "non-agreement" immediately and unequivocally to her former counsel, who both pretextually and physically constrained her not to communicate her disagreement with the settlement terms proposed, and that the correspondence between counsel in the wake of the purported settlement further manifested, and indeed corroborated, that no settlement had ever been reached. See Appendix A-52. Although Plaintiff Trinh was available to testify and proffered testimony at the hearing, the Magistrate Judge did not request to receive the proffered evidence, took no testimony, and received no evidence, but, rather, heard only argument of counsel at the hearing on the Verified Pro Se Motion for Relief., etc.

The evidence before the court of first instance showed that there was no settlement. Indeed, not only did Plaintiff's verified motion say so, but the Motion to Withdraw by Plaintiff's counsel, filed in the wake of her filing the Verified Pro Se Motion for Relief, recognized that the Defendants, if one or more of them believes it settled, has not paid, or even tendered payment of the amount it claims resolved the case. Appendix A-61. It is worth emphasizing that the record evidence before the District Court was evidence of NO SETTLEMENT.

Even if based on the repeated failure to file settlement papers after numerous extensions, the Court ought to consider that any delay was due more likely to the non-existence of the

settlement. Again, the evidence of record before the District Court showed that Plaintiff's former counsel shortly after the time of the alleged settlement, cryptically recognized that Plaintiff had NOT AGREED. See APPENDIX A-52, Plaintiff's Exhibit 5.

Since there was no factual basis for the original order requiring the parties to submit settlement papers, since in fact the two parties had not agreed to a settlement, to give a seal of approval to a definitive dismissal by denying a motion for relief from the order of dismissal under the facts of this case is palpably wrong, It is like failing to grant a new trial to an accused where evidence wrongfully seized was used to convict, or where new evidence is introduced to disprove guilt, simply because there had already been a trial at first instance and appeal affirming the sentence.

The order requiring submission of settlement papers, where no settlement was agreed by the parties, should have no effect – should be a nullity *nunc pro tunc*, and to treat it otherwise is inequitable to Plaintiff. This is particularly acute where the Defendant enjoys a dismissal with prejudice, but without having given or exchanged any consideration for the so-called settlement. This leaves Plaintiff apparently without a remedy, legal or equitable. As argued in the Verified Pro Se Motion for Relief, Plaintiff's underlying case stands dismissed with prejudice, and the District Court ought retained no jurisdiction to enforce any supposed settlement agreement, while Plaintiff at the same time lacked the elements of a contract for purposes of a cause of action for a breach thereof before the State Court.

The result, particularly and most definitively, if the District Court's actions, and the Court of Appeals inactions are permitted to stand, will work a clear inequity on the Plaintiff. This is because, despite the Plaintiff's evidence and the

absence of any evidence of record to the contrary, if this case is definitively settled, such a ruling will permit a great injustice of a failure of consideration by Defendant to Plaintiff, while Defendant retains the benefits of its alleged bargain, in the form of a dismissal with prejudice – free of charge, in effect. Dealing with settlement agreements, this case suddenly looms with an importance out of all proportion to its relative "dollar value," affecting some 95% or more of all cases filed.

Under Florida law, settlements are treated like any other contract, Robbie v. City of Miami, 469 So.2d 1384 (Fla. 1985), and as such are governed principally and fundamentally by State law. In Florida, it has been recognized that the employment of an attorney does not, of itself, give the attorney authority to compromise a client's cause of action or settle the client's claim, absent an emergency situation. Lechuga v. Flanigan's Enterprises, Inc, 533 So.2d 856 (Fla. 3rd DCA 1988). The Third DCA concluded on that point that "[i]t follows that an attorney has no authority to settle as client's claim on conditions other than those unequivocally approved by the client. Id., at 857.

Appendix A-52 shows that the Plaintiff's attorney long ago recognized that Plaintiff did not agree to the settlement. In Florida, the making of a contract depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs- not on the parties having meant the same thing but on their having said the same thing. Blackhawk Heating & Plumbing Co. v. Data Lease Financial Corp., 302 So.2d 404 (Fla. 1974).

For a settlement to be binding on the parties it should be clear that it is full and complete, covers all issues, and is understood by all litigants concerned. Gaines v. Nortrust Reality Management, Inc., 422 So.2d 1037 (Fla. 3rd DCA 1982). In Gaines, the court found that the parties had not

reached a mutual understanding as to whether general or limited releases were to be executed, an essential element of the settlement, and therefore, no enforceable agreement could exist. In re Sav-A-Stop Incorporated, 124 B.R. 356 (M.D. Fla. 1991), citing Gaines, supra, at 1040.

Such was precisely the case in this matter. The Appendix items show that, beyond the Plaintiff's challenge to agreement on a settlement amount, it is clear that negotiations continued, and never realized or achieved agreement, on the issue of general or limited release. Florida law would not recognize an agreement in these circumstances. This Court, then, should not let stand the actions and inactions of the District Court and the Court of Appeals.

CONCLUSION

The facts set forth in this Petition make clear that, the United States Court of Appeals for the Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings, or has so far sanctioned such a departure by the lower court, that this case cries out for the intervention of the higher authority of this Court.

Clearly, the District Court ought to have afforded an evidentiary hearing to the Plaintiff on her motion for relief asserting that no cognizable settlement had ever been reached. Equally importantly, the District Court should not have concluded that consulting the computer-access PACER system to determine the entry of an order is legally tantamount to timely receipt of a copy of the order from the Clerk of Court or an adverse party, as provided in the Federal Rules of Appellate Procedure.

The Court of Appeals should not have countenanced either of these decisions, the consequence of which is that the

Plaintiff/Petitioner is left without a remedy, and in effect, without due process and a right to be heard on her claims with respect to the Title VII action, the "alleged" settlement thereon, and her right to appeal errors of law by the court of first instance.

WHEREFORE, Petitioner prays that this Honorable Court grant this Petition for Writ of Certiorari, reverse the dismissal of this appeal, and order a remand to the District Court for an evidentiary hearing on the existence, or not, of a settlement agreement between the parties.

Respectfully Submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 04-13685-E

[DATE STAMP]

NGOC NU TRINH,

Plaintiff-Appellant,

versus

MEDTRONIC, INC., a Minnesota corporation,
RAMON PAZ, an individual,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Florida

Before ANDERSON, CARNES and MARCUS, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED for lack of jurisdiction. On March 1, 2004, the district court entered an order on the docket denying the appellant's motion for relief from the order of dismissal in this employment discrimination action, 42 U.S.C. § 2000. The appellant filed a motion, pursuant to Fed.R.Civ.P. 60(b), alleging lack of notice of the entry of the order entered on March 1, 2004. On July 2, 2004, the district court granted in part the Fed.R.Civ.P. 60(b) motion, and allowed the appellant thirty days in which to file a notice of appeal. On July 21, 2004, the appellant filed a notice of appeal.

We *sua sponte* dismissed the July 21,2004, notice of appeal for lack of jurisdiction on the basis that it was untimely to challenge the order entered on March 1, 2004. *See* Fed.R.App.P. 4(a)(1)(A). Upon reconsideration, however, we remanded the action to the district court for a determination as to whether the appellant was entitled to relief pursuant to Fed.R.App.P. 4(a)(6), as Fed.R.Civ.P. 60(b) is unavailable for a lack-of-notice claim. *See Vencor Hospitals, Inc. v. Standard Life and Accident Ins. Co.*, 279 F.3d 1306, 1311 (11th Cir. 2002).

On remand, the district court vacated its July 2, 2004, order granting in part the appellant's Rule 60(b) motion and determined that the appellant was not entitled to Fed.R.App.P. 4(a)(6) relief. Accordingly, this appeal may not proceed.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 00-7892-CIV-MOORE
Magistrate Judge O'Sullivan

[DATE STAMP]

HELEN TRINH aka NGOC NU TRINH,
Plaintiff,

vs.

MEDTRONIC, INC., a Minnesota Corporation,
and RAMON PAZ, an individual,
Defendants.

ORDER

THIS CAUSE came before the Court upon Plaintiff's Motion for Reconsideration of Order on Limited Remand (DE #127).

UPON CONSIDERATION of the motion and pertinent portions of the record, and the Court being fully advised in the premises, the Court enters the following Order denying Plaintiff's Motion for Reconsideration of Order on Limited Remand (DE #127).

On October 27, 2004, this Court entered an Order, vacating this Court's July 2, 2004 Order and determining that Plaintiff's Rule 60 motion for relief from this Court's February 27, 2004 Order, construed as a Rule 4(a)(6) motion ("Rule 4(a)(6) Motion"), does not satisfy the requirements of Federal Rule of Appellate Procedure 4(a)(6). *See* DE #124. In the instant motion, Plaintiff seeks reconsideration of this

Court's October 27, 2004 Order, arguing that the Order "does not appear to take into account the Plaintiff's Memorandum on Limited Remand, and failed to weigh the prejudice suffered by the Plaintiff in the uncertainty of the outcome of her claims herein," and "has overlooked the matter of the Plaintiff's arguments and evidence on the issues remanded in the Limited Remand." Mot. for Reconsideration at 1.

A party may move for reconsideration under Federal Rules of Civil Procedure 59(e) or 60(b). Because Plaintiff's Motion for Reconsideration does not cite either rule to support the motion, to be thorough, the Court will analyze her motion under both rules.

Rule 59(e) provides that "[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." It is within this Court's discretion to grant or deny such a motion. *See Wendy's Int'l, Inc. v. Nu-Cape Construction, Inc.*, 169 F.R.D. 680, 684 (M.D. Fla. 1996). "A motion to alter or amend a judgment must demonstrate why the court should reconsider its prior decision and set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *Id.* (citations and quotations omitted). There are three grounds justifying reconsideration of an order: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice. *Id.* However, "reconsideration of a previous order is an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." *Id.* at 685 (citations omitted).

Plaintiff's Motion for Reconsideration was filed within 10 days of this Court's October 27, 2004 Order. However, Plaintiff has not met her burden of showing that reconsideration is justified based on any of the three

grounds. Even considering the arguments presented in Plaintiff's Memo on Limited Remand, Plaintiff's Rule 4 (a)(6) Motion does not meet the requirements of Rule 4(a)(6). Therefore, Plaintiff has not demonstrated the need to correct clear error or manifest injustice. Moreover, Plaintiff's Motion for Reconsideration does not set forth any facts or any law that would induce this Court to reverse its October 27, 2004 decision. Therefore, this Court will exercise its discretion to deny such an extraordinary remedy because Plaintiff has not met her burden of justifying reconsideration.

Federal Rule of Civil Procedure 60(b) provides, in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

The Court will assume that the motion is pursuant to Rule 60(b)(6), the only provision that may reasonably apply

here. Plaintiff claims that if the Court would have considered the arguments she presented in Plaintiff's Memorandum of Law Following Limited Remand Regarding Application of Rule 4(a)(6) (DE #126) ("Memo on Limited Remand"),[1] the Court would have determined that Plaintiff's Rule 4(a)(6) Motion met the requirements of Rule 4(a)(6), and that the defendants would suffer no prejudice if her Rule 4(a)(6) Motion were granted. However, as explained below, the arguments presented in Plaintiff's Memo on Limited Remand do not change the analysis this Court undertook in its October 27, 2004 Order, nor do they change the Court's conclusions.

First, Plaintiff's Memo on Limited Remand argues that Plaintiff's Rule 4(a)(6) Motion satisfies part B of Rule 4(a)(6). In its October 27, 2004 Order, this Court did not conclude otherwise, but assumed Plaintiff's Rule 4(a)(6) Motion satisfies part B. *See* Oct. 27, 2004 Order at 2-3.

Second, Plaintiff's Memo on Limited Remand argues that Plaintiff's Rule 4(a)(6) Motion satisfies part A of Rule 4(a)(6) because the motion was filed within 180 days of the entry of this Court's February 27, 2004 Order (the order Plaintiff is seeking to appeal). Part A of Rule 4(a)(6) states: "the motion [to reopen time to appeal] is filed within 180 days after the judgment or order entered *or within 7 days after the moving party receives notice of the entry,* whichever is earlier." Although Plaintiff's counsel concedes that he discovered the entry of this Court's February 27, 2004

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[1]Plaintiff's Memo on Limited Remand was filed on October 28, 2004, after the Court entered its October 27, 2004 Order.

Order on the PACER system on his own initiative,[2] Plaintiff argues that the 7 day deadline outlined in Rule 4(a)(6)(A) should not apply because such notice did not come from the clerk or from any party. Memo on Limited Remand at 5. However, Rule 4(a)(6)(A) does not require that notice of entry of a judgment or order must come from the clerk or from a party.[3] As explained in this Court's October 27, 2004 Order, the 7 day deadline is the appropriate deadline, and therefore Plaintiff has not met her burden in her Rule 4(a)(6) Motion of showing that she satisfies part A of the Rule.

Third, although Plaintiff's instant Motion for Reconsideration argues that the Court failed to weigh the prejudice suffered by the Plaintiff in the uncertainty of the outcome of her claims, neither Plaintiff's Memo on Limited Remand, nor Plaintiff's Rule 4(a)(6) Motion, address any alleged prejudice that would be suffered by Plaintiff by the denial of her Rule 4(a)(6) Motion.[4] Further, Plaintiff's motions do not even mention the obvious prejudice that the defendants in this case would suffer if Plaintiff's Rule 4(a)(6)

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[2]In Plaintiff's Rule 4(a)(6) Motion, Plaintiff's counsel conceded that he received notice of the entry of this Court's February 27, 2004 Order sometime in early to mid-June, 2004. As explained by this Court in its October 27, 2004 Order, June 2004 was before the 180 day deadline established in Rule 4(a)(6), therefore the 7 day deadline, the earlier of the two, applies.

[3]Plaintiff's counsel inaccurately quoted Rule 4(a)(6) in his Memo on Limited Remand. *See* Memo on Limited Remand at 3. This may account for Plaintiff's misreading of the Rule.

[4]Although a subtle distinction, Rule 4(a)(6)(C) indicates the district court *may* reopen the time to file an appeal, provided that the court finds that no party will be prejudiced. The converse is not true: Rule 4(a)(6) does not provide that a court *must* (or even may) reopen the time to file an appeal if the court finds that a party will be prejudiced if the time to appeal is not reopened.

Motion was granted. Therefore, as previously concluded by this Court, Plaintiff's Rule 4(a)(6) Motion fails to satisfy part C of Rule 4(a)(6).

Accordingly, as Plaintiff has not met the requirement of Rule 60(b) or Rule 59(e), and based on the foregoing, it is

ORDERED AND ADJUDGED that Plaintiff's Motion for Reconsideration of Order on Limited Remand (DE #127) is DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 10th day of November, 2004.

/s/ K. MICHAEL MOORE
K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 00-7892-CIV-MOORE
Magistrate Judge O'Sullivan

[DATE STAMP]

NGOC NU TRINH,
Plaintiff,

vs.

MEDTRONIC, INC., and
RAMON PAZ,
Defendants.

ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATION

THIS CAUSE came before the Court upon Plaintiff's Verificd Motion for Relief from Order of Dismissal (DE #99).

THE MATTER was referred to United States Magistrale Judge John J. O'Sullivan. A Report and Recommendation dated February 19, 2004 (DE # 106) has been filed recommending that the motion be denied. Plaintiff has filed written objections to the Report and Recommendation and Defendant filed a response thereto.

Accordingly, after a *de novo* review of the record herein, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that United States Magistrate Judge O'Sullivan's Report and Recommendation (DE # 106) is ADOPTED in its entirety.

IT IS FURTHER ORDERED, and based thereon, that Plaintiff's Verified Motion for Relief from Order of Dismissal (DE #99) is DENIED. All pending motions not otherwise ruled upon are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 27th of February, 2004.

/s/ K. MICHAEL MOORE
K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

cc: United States Magistrate Judge John J. O'Sullivan
All Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 00-7892-CIV-MOORE/O'SULLIVAN

[DATE STAMP]

NGOC NU TRINH,
Plaintiff,

v.

MEDTRONIC, INC., a Minnesota Corporation,
and RAMON PAZ, an individual,
Defendants.

REPORT AND RECOMMENDATION

THIS MATTER came before the Court on the Plaintiff's Verified Motion Pro Se for Relief from Order of Dismissal by Review to Reinstate and/or to Re-Open the Closed Case (DE # 99, 12/16/03). This matter was referred to United States Magistrate Judge John J. O'Sullivan by the Honorable K. Michael Moore, United States District Court Judge for the Southern District of Florida, pursuant to 28 U.S.C. § 636 (b). Having reviewd the applicable filings and law, and having heard oral argument from counsel, the undersigned respectfully recommends that the aforementioned motion be DENIED as more fully explained below.

BACKGROUND

This case was dismissed with prejudice by this Court on February 7, 2002. On March 12, 2002, Judge Moore entered an order stating "pursuant to the February 7, 2002,

Order of Dismissal, this Court has jurisdiction *over no other aspects of this litigation or settlement agreement.*" (DE # 89, 3/12/02, emphasis in the original). The Eleventh Circuit Court of Appeal affirmed the dismissal and denied the plaintiff's Petition for Rehearing.[1] The plaintiff filed the instant motion on December 16, 2003, a response was filed on January 5, 2004, and a reply was filed on January 13, 2004.

ANALYSIS

The plaintiff seeks relief under Rule 60(b)(5) and (6). Rule 60(b)(5) applies where "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." *See* Fed.R.Civ.P. 60(b)(5). Plaintiff fails to and is unable to assert that a judgment has been satisfied, released, or discharged. Likewise, no former judgment has been reversed or otherwise vacated. In the case at bar, the judgment by the district court was affirmed by the appellate court. Moreover, Rule 60(b)(5) applies to orders that are no longer equitable not orders that were never equitable. Here, the plaintiff argues that the dismissal Order was never equitable, not that it is no longer equitable.

The plaintiff also seeks relief under Rule 60(b)(6) which states "any other reason justifying relief from the operation of the judgment." The undersigned finds that because no extraordinary circumstances exist in the case at bar to permit the reopening of this matter. On December 21, 2001, Judge Moore entered a Notice of Court Practice Upon Parties'

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[1]The Order dated March 5, 2003, affirms this Court's dismissal, and the Order dated June 9, 2003, denies rehearing.

Notice of Settlement (DE # 70). The Notice directed the parties "to file a proposed Order of Dismissal and appropriate documents pursuant to Rule 41(a), Fed. R. Civ. P., on or before Thursday, January 3, 2002." (Emphasis in the original). Judge Moore further cautioned that "[i]f such papers are not filed within the time specified, this matter will be DISMISSED, and the Court will be divested of jurisdiction to enforce the settlement agreement." Four extension of time were granted to comply with the aforementioned requirements and on February 7, 2002, Judge Moore dismissed this case with prejudice. The Order of dismissal was affirmed by the Eleventh Circuit on March 5, 2003, and the petition for rehearing denied by the Eleventh Circuit on June 9, 2003. The plaintiff complains that she did not authorize the settlement in this matter. The motion fails, however, to adequately challenge this Courts issuance of an Ordcr of dismissal. This case concluded because the plaintiff failed to comply with the requirements of an Order issued by this Court.

Accordingly, the undersigned finds that the plaintiff has failed to meet the requirements set out by Rule 60(b)(5) and (6).

RECOMMENDATION

In accordance with the above and foregoing, it is hereby

RECOMMENDED that the Plaintiff's Verified Motion Pro Se for Relief from Order of Dismissal by Review to Reinstate and/or to Re-Open the Closcd Case (DE # 99, 12/16/03) be DENIED. The parties have ten (10) days from the date of receipt of this Report and Recommendation within which to serve and file written objections, if any, with the Honorable K. Michael Moore, United States District

Court Judge. Failure to file objections timely shall bar the parties from attacking on appeal the factual findings contained herein. *See LoConte v. Dugger*, 847 F.2d 745 (11th Cir. 1988), cert. denied, 488 U.S. 958, 109 S.Ct. 397 (1988); *See Also, RTC v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir 1993).

RESPECTFULLY SUBMITTED at the United States Courthouse, Miami, Florida this 19 day of February, 2004.

/s/ JOHN J. O'SULLIVAN
JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies provided to:

United States District Judge Moore
All Counsel on Record

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 00-7892-CIV-MOORE
Magistrate Judge O'Sullivan

[DATE STAMP]

HELEN TRINH aka NGOC NU TRINH,
Plaintiff,

vs.

MEDTRONIC, INC., a Minnesota Corporation,
and RAMON PAZ, an individual,
Defendants.

ORDER

THIS CAUSE came before the Court upon the Plaintiff's Motion and Corrected Motion for Relief from Order Adopting Magistrate's Report and Recommendation (DE#s 112, 113).

UPON CONSIDERATION of the Plaintiff's motion, and the Court being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the Plaintiff's Motion and Corrected Motion for Relief from Order Adopting Magistrage's Report and Recommendation (DE#s 112, 113) is GRANTED IN PART. This Court reaffirms its February 27, 2004 Order adopting the Magistrate's Report and Recommendation (DE # 111). However, the Plaintff shall be allowed thirty (30) days from the date of this Order

in which to file a notice of appeal from the Court's Order adopting the Magistrate's Report and Recommendation.

DONE AND ORDERED in Chambers at Miami, Florida, this 2nd day of July, 2004.

/s/ K. MICHAEL MOORE
K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 04-13685-E

[DATE STAMP]

NGOC NU TRINH,

Plaintiff-Appellant,

versus

MEDTRONIC, INC., a Minnesota corporation,
RAMON PAZ, an individual,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Florida

Before ANDERSON, CARNES and MARCUS, Circuit Judges.

BY THE COURT:

The "Appellant's Suggestion of Hearing *En Banc*," construed as a motion for reconsideration of the Court's November 30, 2004, order dismissing this appeal for lack of jurisdiction, is DENIED. We properly dismissed the action after the district court denied the appellant Fed.R.App.P. 4(a)(6) relief upon remand. *See* Fed.R.App.P. 26(b); *Sanders v. United States*, 113 F.3d 184, 187 (11th Cir. 1997).

Rule 59. New Trials; Amendment of Judgments

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. Any motion for a new trial shall be filed no later than 10 days after entry of the judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On Court's Initiative; Notice; Specifying Grounds. No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for

a reason not stated in a motion, the court shall specify the grounds in its order.

(e) Motion to Alter or Amend Judgment. Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

Rule 60. Relief from Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for

reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 4. Appeal as of Right – When Taken

(a) Appeal in a Civil Case.

(1) *Time for Filing a Notice of Appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or

not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

(B)

(i) If a party files a notice of appeal after the court announces or enters a judgment – but before it disposes of any motion listed in Rule 4(a)(4)(A) – the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal – in compliance with Rule 3(c) – within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) *Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and

(C) the court finds that no party would be prejudiced.

(7) *Entry Defined.*

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a)(1) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a)(1) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:
the judgment or order is set forth on a separate document, or 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a)(1) does not affect the validity of an appeal from that judgment or order.

(b) Appeal in a Criminal Case.

(1) *Time for Filing a Notice of Appeal.*

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or (ii) the filing of a notice of appeal by any defendant.

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision, sentence, or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry.

(3) *Effect of a Motion on a Notice of Appeal.*

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 10 days after the entry of the order disposing of the last such remaining motion, or within 10 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 10 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order – but before it disposes of any of the motions referred to in Rule 4(b)(3)(A) – becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective – without amendment – to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) *Motion for Extension of Time.* Upon a finding of excusable neglect or good cause, the district court may – before or after the time has expired, with or without motion and notice — extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) *Jurisdiction.* The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of

Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) *Entry Defined.* A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 00-7892-CIV-MOORE/O'SULLIVAN

[DATE STAMP]

HELEN TRINH aka NGOC NU TRINH,
Plaintiff,

v.

MEDTRONIC, INC., a Minnesota Corporation,
and RAMON PAZ, an individual,
Defendants.

PLAINTIFF'S VERIFIED MOTION PRO SE[1] FOR RELIEF FROM ORDER OF DISMISSAL BY REVIEW TO REINSTATE AND/OR TO RE-OPEN THE CLOSED CASE
and Incorporated Memorandum of Law

Plaintiff, Helen Trinh, pro se, hereby files this Motion for Review to reinstate and / or to Re-open the closed above case, pursuant to the authority of Rule 60, Fed.R.Civ.P. closed by order of dismissal on or about March 12, 2002 by the Honorable United States District Judge K. Michael MOORE.

This Motion is motivated by the following statements:

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[1]PREPARED WITH ASSISTANCE OF COUNSEL

STATEMENT OF THE UNDISCLOSED FACTS TO THE COURT.

1- On January 3, 2002, the Plaintiff Counsel, Bruce G. HERMELEE, requested the "Motion For Extension Of Time For Dismissal Of Matter And Closing Of Case" to the District Judge Michael K. MOORE.

2- The Request has mentioned in the Motion that "The parties had a successful mediation before Honorable Magistrate Judge John J. O'Sullivan on December 20, 2001.

3- The first fact: I did not agree to accept the sum of amount offered by Defendant. See, also, Exhibit 5.

In the view to handle the case in his preferred way, my Counsel had not assisted me to interpret my negative answer and failed to report immediately before the Honorable Magistrate Judge John J. O'SULLIVAN that the mediation was unsuccessful between the parties and the settlement HAD NOT BEEN AGREED.

4- The second fact: My Counsel had even PHYSICALLY OPPOSED ME when I had trying to go back IMMEDIATELY into the Office of the Honorable Magistrate Judge John J. O'SULLIVAN to clarify myself my non-agreement to the Magistrate Judge John J. O'SULLIVAN

This is the veracity of some facts and circumstances surrounding the mediation that I was in the IMPOSSIBILITY and INCAPACITY to disclose at that time.

5- After two unsuccessful attempts to go back to the Honorable Magistrate John J. O'SULLIVAN Office for

clarifying my negative answer to the Defendant's offer at the front door of Suite 203 (where was held the mediation), I had contested vigorously the conduct of Bruce HERMELEE for having opposed me to do the right thing in the right moment.

Bruce HERMELEE had finally promised to me to arrange that and had demanded: "Don't do that to me" ... "Let me arrange that". Then Bruce HERMELEE went back to talk with Judge J. O'Sullivan while I was waiting in the hall with Bruce HERMELEE's Assistant, Mrs Maria TRAN.

6- I had verbally reiterated my non agreement about the amount offered by the Defendant to my Counsel in the same day in the Brook-Hermelee-Geffin Law Office and then by Facsimile transmission following a certified mail the day after on December 21, 2001. (Exhibit # 1).

7- The third fact: The Mediation was a TENTATIVE OF AN AGREEMENT and this Tentative was Failed in fact. See Exhibits 6, 7, and 8.

The interpretation of Plaintiff's Counsel concerning this tentative were incorrect and abusive.

The Magistrate Judge John J. O'SULLIVAN had had make a conclusion based and oriented by the interpretation of the Parties' Counsel.

8- Furthermore, my Counsel had continually tried to convince me to accept the offer of Defendant and had likely forced me into that issue by working out with Defendant's Counsel on the terms and conditions of the Agreement which offered an unjust advantage expected by Defendant as run out dead line time of the granted Extensions of Time for Dismissal of Matter and Closing of Case.

9- Counsels in both side continued to work on the terms and conditions of the Agreement prepared by Defendant's Counsel knowingly that it was an unsuccessful tentative of settlement and knowingly that was contrary to my demand.

Consequently, no settlement or release was agreed to or signed by myself.

10- I had reiterated verbally my non-agreement several times and during several meetings and also by mails. My Counsel just kept going on in handling my case on my beliefs by the way he had preferred knowingly that was contrary with my will. (Exhibit # 2,3,4).

The very regrettable point for the case was the Extensions of Time for Dismissal of the Matter granted by Honorable Judge Michael K. Moore since January 3, 2002 to January 11, 2002 then to January 18, 2002 then to February 1, 2002 were misused by Bruce HERMELEE for not clarify my non agreement as he should do at that time.

11- All my efforts to waive the right to have freely accepted and / or refused an agreement were vain because the case was dismissed with prejudice on February 7, 2002 and the Plaintiff's Motion to Refer the Matter to Magistrate John J. O'SULLIVAN and / or To Reinstate Cause of Action was denied on March 12, 2002.

12- Following the Notice of Appeal filed on April 9, 2002, the parties attended a third mediation on November 15, 2002. Unfortunately, the mediation was unable to reach a resolution before the Honorable Circuit Mediator G.F. Canner Then the Petition for Rehearing en Banc was denied on June 5, 2003, mandated on June 17 2003. (Exhibit # 5)

13- The fourth fact: All my merited efforts for bringing my cause to trial should not be arbitrarily barred by FLAW OF PROCEDURE arisen from the misrepresentation of my Counsel which had consecutively misleaded the Court.

That situation had created an extreme unfair advantage to Defendant due to the character unfinished, incomplete of the certain step during the pretrial procedure. Such situation had effectively allowed to Defendant to get rid of their responsibility and their liability for a discriminatory action towards a skilled Asian female worker at 54 year old (at that time) because all Plaintiff's action were closed without Agreement reached nor Judgment on the cause of Litigation

14- Successive Motions from Defendants with intimidating and demeaning statements towards Plaintiff in addition with the hastiness for Filing and Withdrawing Motion for Enforcement of Settlement Agreement face to a "No Meeting of Mind" between Parties indicated clearly a tentative for obstruction of Justice.

15- As a victim of a Discrimination case and of all facts mentioned above, I would like to express my deep anxiety and my hurtful grievance for having been obstructed and driven away when bringing a discriminatory case to justice.

MEMORANDUM OF LAW

Settlements are treated in the law like any other contract, *Robbie v. City of Miami,* 469 So.2d 1384 (Fla. 1985), and as such are governed principally and fundamentally by State law. In Florida, it has been recognized by the Third District Court of Appeal that the employment of an attorney does not, of itself, give the attorney authority to compromise a client's cause of action or

settle the client's claim, absent an emergency situation. *Lechuga v. Flanigan's Enterprises, Inc.*, 533 So.2d 856 (Fla. 3rd DCA 1988). The Third DCA concluded on that point that "[i]t follows that an attorney has no authority to settle a client's claim on conditions other than those unequivocally approved by the client. *Id.*, at 857.

Exhibit 5 shows that the Plaintiff's attorney recognizes that Plaintiff did not agree to the settlement.

In Florida, the making of a contract depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs – not on the parties having meant the same thing but on their having said the same thing. *Blackhawk Heating & Plumbing Co. v. Data Lease Financial Corp.*, 302 So.2d 404 (Fla. 1974).

For a settlement to be binding on the parties it should be clear that it is full and complete, covers all issues, and is understood by all litigants concerned. *Gaines v. Nortrust Realty Management, Inc.*, 422 So.2d 1037 (Fla. 3rd DCA 1982). In *Gaines*, the court found that the parties had not reached a mutual understanding as to whether general or limited releases were to be executed, an essential element of the settlement, and therefore, no enforceable agreement could exist. *In re Sav-A-Stop Incorporated,* 124 B.R. 356 (M.D. Fla. 1991), citing *Gaines*, supra, at 1040. Such was precisely the case here. Exhibits 6, 7 and 8 show that, beyond the Plaintiff's challenge to agreement on a settlement *amount*, it is clear that negotiations continued, and never realized or achieved agreement, on the issue of general or limited release. Florida law would not recognize an agreement in these circumstances.

Rule 60(b), Fed.R.Civ.P., provides that:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Plaintiff here bases her argument for relief from the order dismissing the case, and closing the file, on reasons (5) and (6). For reason (6), the unique facts of this case, with its underlying charges of discrimination suggesting cultural differences that can often be misinterpreted, it is clear that the facts set forth in this motion, with the attached exhibits, demonstrate that there are factual reasons justifying relief from the operation of the order of dismissal, which has, ultimately, worked a great hardship upon the Plaintiff in seeking redress for her workplace grievances. As for reason (5), it is no longer equitable that the judgment (or order of dismissal) should have prospective application since, though it is based on a "settlement" that was never in fact agreed to by the Plaintiff, the Court's dismissal does not allow either for Plaintiff to establish her claim, or even to enforce the "settlement" if that were the case, before the District Court.

On the other hand, for a settlement agreement to be enforceable under Florida law, it must be sufficiently specific, and reflect assent by the parties to all essential terms. See, e.g., *Williams v. Ingram*, 605 So.2d 890 (Fla. 1st DCA 1992). Where essential terms of an agreement remain open, subject to future negotiation, there can be no enforceable contract. See, e.g., *Central Properties, Inc. v. Robbinson*, 450 So.2d 277 (Fla. 1st DCA 1994); *modif. on other grounds*, 468 So.2d 986 (Fla. 1985). In this regard, the "settlement agreement" in this case could not be recognized as such for purposes of enforcement in state court.

Plaintiff requires relief from the order of dismissal, because otherwise, she is without a legal remedy at this time, whether the settlement agreement exists or not. The Plaintiff has made clear, certainly, on this motion with its attached exhibits, that Plaintiff herself did not agree to any settlement agreement, and ultimately counsel were not able to resolve the differences. See, particularly, Exhibits 5-8.

The Eighth Circuit has held that an evidentiary hearing had to be conducted, in connection with a motion for relief from a judgment, regarding the existence of a settlement agreement, where the existence of the settlement agreement was disputed and the dispute was highly relevant to the outcome of the motion. *Sheng v. Starkey Laboratories Inc.*, 53 F.3d 192 (8th Cir. 1995). Such is the case here, since the existence of the settlement agreement, or not, is the core issue on this motion. Plaintiff has always maintained that there was not a settlement approved by Plaintiff herself.

CONCLUSION

1- I do believe on your noble and high consideration of Justice and also on your impartial concern of the fundamental right to pursue to trial an illegal action and I do

request that you would grant my request to reopen the case No 007892-CIV-MOORE / SULLIVAN allowing an legal and remedial issue for *Helen Trinh, Plaintiff vs Medtronic, a Minnesota Corporation , and Ramon Paz, an individual, Defendants*, including the conduct of a hearing on the existence, or not, of a settlement agreement between the parties in this action.

WHEREFORE, Plaintiff prays that this Honorable Court grant this motion for relief from the Order of Dismissal, reopening and reinstating the case, and ordering a hearing to be conducted on the existence, or not, of a settlement agreement between the Plaintiff, on the one hand, and the Defendants, or either of them, on the other.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully Submitted,
Helen Trinh aka Ngoc Nu Trinh
8105 Southgate Blvd
North Lauderdale FL 33068
Tel. 954 - 720-2547
Fax 954 - 720-8586

/s/ Helen Trinh
NGOC NU "HELEN" TRINH
Plaintiff

Dated: December 16, 2003

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via certified mail this 16th day of December, 2003 to Alvin B. Davis, Esq., and Heather L. Gatley, Esq., Steel Hector & Davis LLP, 200 South Biscayne Boulevard, Suite 4000, Miami, Florida 33131-2398 and to Bruce G. Hermelee, Esq., Brooks Hermelee Geffin, 25 SE 2nd Avenue Suite 1135, Miami, Florida 33131-2352.

Helen Trinh aka Ngoc Nu Trinh
8105 Southgate Blvd
North Lauderdale FL 33068
Tel. 954 - 720-2547
Fax 954 - 720-8586

/s/ Helen Trinh
NGOC NU "HELEN" TRINH
Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 00-7892-CIV-MOORE/O'SULLIVAN

[DATE STAMP]

HELEN TRINH aka NGOC NU TRINH,
Plaintiff,

v.

MEDTRONIC, INC., a Minnesota Corporation,
and RAMON PAZ, an individual,
Defendants.

PLAINTIFF'S PRO SE[1] NOTICE OF FILING EXHIBITS

Plaintiff, HELEN TRINH, aka NGOC NU TRINH, Pro Se, hereby gives notice of filing the attached Exhibits 1 through 8, for consideration by the Court on Plaintiff's Verified Motion Pro Se for Relief from Order of Dismissal by Review to Reinstate and/or Re-Open the Closed Case, or for such other purposes as may be permitted by law or rule of court.

Respectfully Submitted,
Helen Trinh aka Ngoc Nu Trinh
8105 Southgate Blvd
North Lauderdale FL 33068
Tel. 954 - 720-2547
Fax 954 - 720-8586

---

[1]PREPARED WITH ASSISTANCE OF COUNSEL

/s/ Helen Trinh
NGOC NU "HELEN" TRINH
Plaintiff

Dated: December 16, 2003

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via certified mail this 16th day of December, 2003 to Alvin B. Davis, Esq., and Heather L. Gatley, Esq., Steel Hector & Davis LLP, 200 South Biscayne Boulevard, Suite 4000, Miami, Florida 33131-2398 and to Bruce G. Hermelee, Esq., Brooks Hermelee Geffin, 25 SE 2nd Avenue Suite 1135, Miami, Florida 33131-2352.

Helen Trinh aka Ngoc Nu Trinh
8105 Southgate Blvd
North Lauderdale FL 33068
Tel. 954 - 720-2547
Fax 954 - 720-8586

/s/ Helen Trinh
NGOC NU "HELEN" TRINH
Plaintiff Pro Se

To attention: Bruce HERMELEE
Attorney At Law
The Ingraham Building
25 SE 2nd Avenue Suite 1135
MIAMI FL 33131-1506

SENDED BY FAX & BY US MAIL
December 21st, 2001

Dear Attorney,

This letter is to confirm my disagreement with the issue concerning the amount during the settlement seance in the court house on December 20, 2001.

I would like to insist that I never have agreed with the terms of the mediation including this amount.

However, for your tactical practice, I didn't react to the Judge proposition as you advised and asked me to do so.

I felt very embarrassed by this way in front of Judge O'Sullivan because I never had agreed with the terms of the mediation on Thursday, December 20th, 2001.

By respect of your demand, I couldn't get back to the Court room and to let the Judge know my final decision: not to accept this amount.

I was placed in impossibility to do it.

Finally, I reiterate my decision not to accept this amount and I confirm that I never agreed the terms of the Mediation during the pretrial with the Judge.

Thank you for your attention in this matter.

/s/ Ngoc Nu Trinh

Ngoc Nu Trinh

[GRAPHIC OMITTED.

U.S. POSTAL SERVICE CERTIFIED MAIL RECEIPT, NO. 7099 3400 0006 7375 4798, ADDRESSED TO:

MR. BRUCE HERMELEE
ATTORNEY
25 S.E. 2ND AVENUE SUITE 1135
MIAMI, FLORIDA 33131

DATED: DECEMBER 22, 2001]

To: Bruce HERMELEE
Attorney At Law
The Ingraham Building
25 SE 2nd Avenue Suite 1135
MIAMI FL 33131-1506

SEND BY FAX & US MAIL
February 1st, 2002

Dear Attorney,

Thank you for the information via fax on January 29 2002.

I have read these documents with my best consideration. There has been a lot of pressure and tension that Medtronic had imposed on me regarding the "Settlement Agreement and General Release" and "Defendant's Motion To Enforce Settlement Agreement And Supporting Memorandum of Law".

I would like, therefore, to confirm my decision: I do *not* agree for the General Release and I do *not* accept this Settlement Agreement.

(Please, refer to my letter sent on December 21 2001 and also to the context of our meeting on January 4 2002)

I believe that the Law does neither Prevent nor Punish anyone to have Freely Accepted or Refused an Agreement after having been understood the meaning of that Agreement.

Thank you for your attention.

Sincerely,

/s/ Ngoc N. Trinh

Ngoc N. Trinh
8105 Southgate Blvd
North Lauderdale FL 33068-1000

To: Bruce Hermelee
Attorney at Law
The Ingraham Building
25 SE 2nd Ave
Miami FL 33131-1506

May 21st, 2002

SENT BY FAX & BY US CERTIFIED MAIL

Dear Bruce,

This letter is just to remind my demand during our meeting on Friday April 26 th, 2002.

1- Document showing the total amount of dollars in fee charges until today that I owed to your Law Firm for my case against Medtronic and R. Paz.

2- A copy of the response from Medtronic justifying and/or replying its non compliance to our Request for Deposition notified to Defendant on September 25th, 2001 and scheduled for October 24th, 2001.

Moreover, I denounce the Obstruction of Evidence organized by Medtronic and R. Paz. Medtronic had definitely indicated its unusual bad motive thorough tortuous interference on ongoing legal procedure prior to trial aiming to get rid of me in the same way it had done when I was employed at Medtronic Sunrise.

I am convinced also that Medtronic had deprived my federally protected rights including my basic right to have free of any form of constraint to accept or to refuse an proposed agreement.

There are a likely correlation of

a/ the Obstruction to our Request for Deposition Duces Tecum to Medtronic's Representative and to R. Paz,

b/ the character Unclear and Unusual of circumstances and conditions surrounding during Mediation/Agreement on December 20th 2001 with

c/ the Hastiness of Medtronic to obtain General Release by intensive request to enforce settlement agreement that both sides haven't already reached, showed evidence of an exceptional circumstance of bad motive of Medtronic's conduct which involved callous indifference to my federally protected rights.

Therefore, I am convinced that the Deposition Duces Tecum of Medtronic's Representative and of R. Paz as a necessary condition prior to any eventual mediation ordered by Court or prior to trial is a step of procedure absolutely indispensable for my cause.

It's certain also that you had been aware of the willfulness of Medtronic to "rob" my protected rights by complicating unnecessary the lawsuit and obstructing the law.

I take also this opportunity to confirm my willingness to collaborate with your honorable representation to prevent any attempt of trap or tricky Mediation/Agreement.

I am looking forward to see you on the next meeting.

Sincerely.

Ngoc N. Trinh (Helen)

8105 Southgate Blvd
North Lauderdale FL 33068-1000
Tel: 954-720 2547 Fax: 954-720 8586

N.B: Enclosed Check #1021 / Amount $55.98 for Invoice # 22152

To Bruce Hermelee, Attorney at Law
The Ingraham Building
25 Southeast 2nd Avenue Suite 1135
Miami, FL 33131-1506

June, 24 2002

Dear Bruce,

I feel very uncomfortable after the reading of documents received from your Office (a copy of Appellant's Brief and Record Excerpts including the invoice of Minit Print in the amount of $309.17.)

I would like to have an appointment to clarify the following matters that are not reflected in the Appeal to the Court:

1/ Medtronic blocked and obstructed our Inquiry For Deposition notified to Defendant on September 25th, 2001 and scheduled for October 24th, 2001.

2/ and, the settlement was not reached on December 20th 2001 with the amount of $51,000 but mentioned on the Appeal as reached!!

Dear Bruce,

* Unless you would advice me that there is just for the tactical technique to move on for the issue Reinstate the Cause of Action, I should perceive that there is a pure and simple additional pressure on my decision to accept the amount of $51,000.00 for the case if the Court will approved the appeal and will ordered to send back the case to Judge Sullivan.

* Unless you would advice me how and when you plan to do for a Deposition Duces Tecum of Medtronic's Representative and of R. Paz, I should believe that you have omitted for unknown reason to denounce to the Court the violation of Medtronic of blocking the inquiry for Deposition prior the trial with the intention to obstruct the law.

* I recognize that your first target of the case actually is the Appeal for Abuse of Discretion from Southern District Court of Florida, however, it's a strict necessity to express my conviction to you: the feeling to be setting up in the disadvantageous situation for acceptance the amount mentioned above!

* Finally, I would like to remind my letter on May 21st, 2002 still no reply.

(1- Document showing the total amount of dollars in fee charges until today that I owed to your Law Firm for my case against Medtronic and R. Paz

2- A copy of the Response from Medtronic replying to our Request for Deposition notified to Defendant on September 25th, 2001 and scheduled for October 24th, 2001.)

Thank you for your attention

/s/ Ngoc N. Trinh

Ngoc N. Trinh (Helen)
8105 Southgate Blvd
North Lauderdale FL 33068-1000 Tel: 954-720 2547
Fax: 954-720 8586

N-B: Enclosed 1-Check #1025 / Amount $309.17 for Minit Print

2-Check # 1026 / Amount $216.00 for Invoice # 22220

[GRAPHIC OMITTED.

U.S. POSTAL SERVICE CERTIFIED MAIL RECEIPT, NO. 7099 3400 0006 7377 9647, ADDRESSED TO:

BRUCE HERMELEE,
ATTORNEY AT LAW
25 S.E. 2ND AVENUE SUITE 1135
MIAMI, FLORIDA 33131-1506

DATED: JUNE 25, 2002]

HELEN TRINH

From: "Bruce Hermelee" <bhermelee@bhglaw.com>
To: "HELEN TRINH" <helengoldkey@msn.com>
Sent: Thursday, November 14, 2002 1:18 PM
Subject: RE: Ngoc Nu Trinh v. Medtronic, Inc., et al. / Mediation on 11/15/2002

I am VERYcareful with my words. That's EXACTLY why I used the word "REACHED" – I NEVER said you AGREED to it.

---Original Message----

From: HELEN TRINH [mailto:helengoldkey@msn.com]
Sent: Thursday, November 14, 2002 7:53 AM
To: Bruce Hermelee
Subject: Re: Ngoc Nu Trinh v. Medtronic, Inc., et al. / Mediation on 11/15/2002

To Bruce HERMELEE, Attorney at Law
The Ingraham Building
25 Southeast 2nd Avenue Suite 1135
Miami, FL 33131-1506

Sent By E MAIL & BY FAX SIMILE

November 14, 2002

Dear Bruce, I have read with consideration the mediation statement brief sent to the Circuit Mediator Gary F. Canner on November 13, 2002.

In respect to that brief faxed to me on November 14, 2002, I have noted in page 2 last paragraph that:

"At the settlement conference before Magistrate O'Sullivan, a settlement was reached."

I fully disagree and object with this statement.

It is unfortunately not the authentic reality and the words of this phrase could probably mislead the Circuit Mediator.

Further I had never agreed to accept the sum of $51,000 in exchange to dismiss the litigation as you known since December 20, 2001.

Consequently, the meaning of this phrase does not represent my behalf.

I have repeatedly reiterated my beliefs and my will to you throughout several meetings, correspondence and telephone communications and again specially on the last meeting on Tuesday November 12, 2002 at about 4.15 pm in your office:

Therefore, I urge you to take necessary disposition to rectify timely the last paragraph of page 2 and to state precisely the words as: "the settlement was not reached. Mrs. Trinh have never agreed to accept the amount of $51,000."

This action will avoid unnecessary delay for the lawsuit and / or will dodge an eventual complication and contradiction in front of the Circuit Mediator.

Thank you for your consideration.

Sincerely,

Ngoc N. Trinh.

---Original Message---

From: Bruce Hermelee
Sent: Thursday, November 07, 2002 1:52 PM
To: HELEN TRINH
Cc: Dorothy
Subject: RE: Ngoc Nu Trinh v. Medtronic, Inc., et al. / Mediation on 11/15/2002

I can't meet wlth you until tuesday or wednesday. I'm in Fort Lauderdale tomorrow, and monday is a holiday. Call tuesday a.m. and we'll make an appointment.

---Original Message---

From: HELEN TRINH [mailto:helengoldkey@msn.com]
Sent: Thursday, November 07, 2002 7:52 AM
To: bhermelee@bhglaw.com
Subject: Ngoc Nu Trinh v. Medtronic, Inc., et al. / Mediation on 11/15/2002

Dear Bruce,

Fax received. Is it possible to plan an meeting for tomorrow Friday November 8, 2002 at 11:am or at 4:p.m.? Please call to 954-873 7345 to confirm this appointment.

Thank you for your attention. Sincerely,
Helen Trinh

[LETTERHEAD OF BROOKS HERMELEE GEFFIN]

January 17, 2002

VIA FAX

Heather L. Gatley, Esq.
Steel Hector Davis
200 South Biscayne Boulevard
Miami, Florida 33131-2398

Re: Trinh v. Medtronic, Inc., et al.

Dear Heather:

This letter sets forth our response to the points in your letter of January 11, 2002, as follows:

1. The suggestions you have made with respect to the payment of the settlement amount, the taxes, and the "hold harmless" provision are acceptable, and we should amend the agreement accordingly.

2. As we have discussed, the problem for Mrs. Trinh is that she believes she may have claims against persons who have worked for Medtronic, that are *not* arising out of her claims of discrimination. We think this requires a specific statement that the release will not also release any claims not related to the claims in this litigation.

3. We are in agreement on this.

4. The substitution of Barbara Stillman would be excellent; I do not know if we should try for Kim McEachron.

5. Your comments are okay on the confidentiality, and we should make these changes to the agreement.

6. We would opt for your last suggestion in paragraph 6 that "In the event of a breach, Medtronic shall be entitled to seek damages including return of the settlement payment," as the best way to resolve this issue.

Thank you for working with us on these matters.

Sincerely,

/s/ Bruce

Bruce G. Hermelee

BGH/dkp
Gatley.Lt3

[LETTERHEAD OF STEEL HECTOR DAVIS]

January 18, 2002

VIA TELECOPY AND U.S. MAIL

Bruce G. Hermelee, Esq.
Brooks Hermelee Geffin
The Ingraham Building - Suite 1135
25 Southeast 2nd Avenue
Miami, Florida 33131

Re: Trinh vs. Medtronic Inc., et al.

Dear Bruce:

I have attached a revised version of the settlement agreement that incorporates the changes upon which the parties have agreed. Yesterday morning you informed me by telephone that we were in agreement on *all issues.* Last evening, however, I received a fax stating that your client would not agree to the one issue that I told you, in no uncertain terms, was not up for debate.

Please inform me by noon on Tuesday whether your client intends to sign the revised settlement agreement containing the original release language. If she does not, I will be left with no choice but to respond to your motion for additional time and request that the Court instead compel compliance with our agreement.

Cordially,

/s/ Heather L. Gatley

Heather L. Gatley

cc: Alvin B. Davis, P.A.
Carlotta J. Roos, Esq.

[LETTERHEAD OF BROOKS HERMELEE GEFFIN]

January 28, 2002

VIA FAX

Ms. Helen Trinh
8105 Southgate Boulevard
North Laudcrdale, FL 33068

Re: Trinh v. Medtronic, Inc., et al.

Dear Helen:

There has been a lot of back and forth on the Settlement Agreement, in connection with the settlement before Magistrate O'Sullivan. You need to be familiar with all of the changes. And, of course, the major problem with Medtronic on a settlement agreement is that it insists that you settle *all* claims that you might have, and not just the claims that you could have made in this litigation.

If you have questions, please call me.

Sincerely,

/s/ Bruce

Bruce G. Hermelee

BGH/dkp
Enclosure
Trinh.Lt4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 00-7892-CIV-MOORE/SULLIVAN

[DATE STAMP]

NGOC NU TRINH,
Plaintiff,

vs.

MEDTRONIC, INC., a Minnesota Corporation,
and RAMON PAZ, an individual,
Defendants.

MOTION TO WITHDRAW

Brooks Hermelee Geffin, counsel of record in this action on behalf of Plaintiff, Helen Trinh, formerly known as Ngoc Nu Trinh, hereby files its Motion to Withdraw as counsel and as grounds therefor states that:

1. Plaintiff Trinh has filed a Verified Motion Pro Se for Relief From Order of Dismissal with this Court, on December 16, 2003.

2. In her motion, Plaintiff Trinh claims that she never agreed to the settlement mediated by Magistrate Judge O'Sullivan, by referral of this Court, on December 21, 2001.

3. This Court dismissed this action by Orders dated February 7, 2002, and March 12, 2002, after notification by Magistrate O'Sullivan that a settlement had been achieved in

the Magistrate's chambers with all parties present. Undersigned counsel concurs with that notification.

4. In fact, the settlement was not consummated, because Defendant Medtronic insisted upon the execution of a General Release by the Plaintiff. While the parties were attempting to resolve the issue of the form of the Release, the case was dismissed by this Court.

5. Defendant Medtronic never paid the settlement amount. It has failed and refused to do so. Medtronic withdrew a motion that it had pending before the Court to enforce the Settlement Agreement. An appeal to the Eleventh Circuit Court of Appeals followed.

6. The Eleventh Circuit of Appeals ruled – for unexplained reasons – that the dismissal of the case was proper. The fact remains, however, that the settlement was never consummated; Defendant Medtronic to this date has not paid Plaintiff Trinh the settlement funds.

7. Following the decision of the Eleventh Circuit Court of Appeals, Plaintiff Trinh consulted with Brooks Hermelee Geffin with respect to her legal options that remained. The Firm advised Plaintiff Trinh that we did not believe it would be ethical to file a new lawsuit, given the record in this case – that Magistrate Judge O'Sullivan clearly had determined that a settlement had, in fact, been achieved between the parties.

8. Therefore, irreconcilable differences arose between Plaintiff Trinh and Brooks Hermelee Geffin. Brooks Hermelee Geffin was willing to file a motion with this Court requesting that it consider the failure of consummation of the Settlement because Defendant Medtronic had never paid the settlement monies. Brooks Hermelee Geffin also suggested a

new action could be brought in the form of a suit to enforce the Settlement Agreement.

9. Brooks Hermelee Geffin accepted Plaintiff Trinh's case on a contingency basis. The Firm felt that the settlement reached between the parties was a fair settlement, beneficial to Plaintiff Trinh. The Firm labored more than a year in the Eleventh Circuit Court of Appeals to advocate whatever rights Plaintiff Trinh may have had in and to the Settlement, or for an opportunity to present her case on the merits. Plaintiff Trinh's appeal was not successful.

10. If Brooks Hermelee Geffin is mistaken in its belief that a new lawuit is not appropriate, Plaintiff Trinh should be able to obtain new counsel to file a new lawsuit.

11. As Plaintiff Trinh's Verified Motion Pro Se for Relief From Order of Dismissal argues, she should be able to re-open her case before this Court. By filing the motion pro se, Plaintiff Trinh has clearly abandoned her counsel, Brooks Hermelee Geffin, since her motion is contrary to the advice that this Firm has given to her. It is also clear that Plaintiff, herself, recognizes that irreconcilable differences have arisen between her and her counsel.

12. Under the foregoing circumstances, Brooks Hermelee Geffin is compelled to file this Motion to Withdraw as counsel for Plaintiff Trinh in this action.

WHEREFORE, the law firm of Brooks Hermelee Geffin seeks an Order from this Court permitting it to withdraw as counsel for Plaintiff Helen Trinh, formerly known as Ngoc Nu Trinh.

Memorandum of Law

It is well settled law that counsel may be permitted to withdraw from representation of a client, when irreconcilable differences develop between the attorney and the client. The courts have broad discretion with respect to well-founded motions to withdraw filed by counsel, and may permit withdrawal of counsel in appropriate circumstances. *Horan v. O'Connor*, 832 So.2d 193 (Fla. 4th DCA 2002).

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed this 5th day of December, 2003, to Heather L. Gatley, Esq., Steel Hector & Davis LLP, 200 South Biscayne Boulevard, Miami, Florida 33131-2398 and Helen Trinh a/k/a Ngoc Nu Trinh, 8105 Southgate Boulevard, North Lauderdale, Florida 33068.

BROOKS HERMELEE GEFFIN
Attorneys for Plaintiff
25 S.E. 2nd Avenue
Suite 1135
Miami, Florida 33131-2352
(305) 373-5444
(305) 373-0039 (Fax)

By: /s/ Bruce G. Hermelee
BRUCE G. HERMELEE
Florida Bar No. 133894

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NGOC NU TRINH,
PLAINTIFF,

CASE NUMBER
00-7892-CIV-MOORE

VS.

THIS VOLUME:
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MEDTRONIC, INC.,
A MINNESOTA CORPORATION,
AND RAMON PAZ, AN INDIVIDUAL,
DEFENDANT.

(TRANSCRIPT BY TAPE)

TRANSCRIPT OF MOTIONS HAD BEFORE THE HONORABLE JOHN J. O'SULLIVAN, IN MIAMI, MIAMI-DADE COUNTY, FLORIDA, ON FEBRUARY 18, 2004, IN THE ABOVE-STYLED MATTER.

APPEARANCES:

FOR THE PLAINTIFF: DAVID S. WILLIG, AND GARY S. BROOKS, ESQS.

FOR THE DEFENDANTS: ALVIN B. DAVIS, ESQ.

CARL SCHANZLEH
OFFICIAL COURT REPORTER
U.S. COURTHOUSE
299 E. BROWARD BLVD., 202B
FORT LAUDERDALE, FLORIDA 33301
954 769-5488

(MIAMI, MIAMI-DADE COUNTY, FLORIDA; FEBRUARY 18, 2004, IN OPEN COURT.)

THE COURT: PLEASE BE SEATED.
WE ARE HERE TODAY IN THE CASE OF – TELL ME HOW TO SAY THIS FIRST NAME, NGOC NU TRINH?
COME ON UP, MA'AM. VERSUS MEDTRONIC, INC., AND RAMON PAZ.
COULD I HAVE YOUR APPEARANCES FOR THE RECORD, PLEASE?

MR. DAVIS: ALVIN DAVIS (INAUDIBLE)

THE COURT: THANK YOU, SIR.

MR. WILLIG: YOUR HONOR (INAUDIBLE)

THE COURT: OKAY. WHAT'S YOUR LAST NAME?

MR. WILLIG: (INAUDIBLE)

THE COURT: ARE YOU MAKING AN APPEARANCE IN THE CASE THEN?

MR. WILLIG: I WASN'T (INAUDIBLE)

THE COURT: OKAY. WELL, I'M GOING TO ALLOW YOU THEN TO MAKE AN ORE TENUS MOTION TO APPEAR ON HER BEHALF TODAY AND I WILL ALLOW YOU TO DO THAT.
WE HAVE TWO MOTIONS BEFORE US. ONE IS BROOKS HERMELEE GEFFIN'S MOTION TO WITHDRAW. LET ME ADDRESS THAT FIRST.
(INAUDIBLE)

THE COURT: COME ON UP. COME SOMEWHERE NEAR A MICROPHONE.

MR. BROOKS: JUDGE, I ' M GARY BROOKS, AND – AM I ON?

THE COURT: YES.

MR. BROOKS: OKAY. I REPRESENT THE FIRM OF BROOKS HERMELEE & GEFFIN, AND I ' M THE FIRST NAME. BRUCE, MY PARTNER IS THE SECOND NAME.

THE COURT: OKAY.

MR. BROOKS: AND WE MOVE TO WITHDRAW.

LET ME SAY AT THE OUTSET THAT MRS. TRINH AND HER HUSBAND ARE WONDERFUL PEOPLE, WE HAVE ALWAYS GOTTEN ALONG VERY WELL WITH THEM. WE LIKE THEM GENUINELY AS PEOPLE, AND WE WERE VERY HAPPY TO REPRESENT THEM.

THE PROBLEM IS THAT WE HAD IRRECONCILABLE DIFFERENCES, AS OUR PLEADING STATES IS ABOUT WHAT STEPS MAY BE TAKEN. MOST SIGNIFICANTLY MRS. TRINH ASKED US TO FILE A NEW LAWSUIT ONCE THE SUBJECT LAWSUIT WAS DISMISSED BY JUDGE MOORE AND THE APPEAL AFFIRMED THAT DISMISSAL.

WE TOLD HER WE DID NOT BELIEVE THAT WAS EITHER LEGAL OR ETHICAL. WE BELIEVE THAT IT WOULD SUBJECT US TO ARTICLE – EXCUSE ME, RULE 11 SANCTIONS, AND THAT WAS NOT THE WAY TO GO.

WE POSED A NUMBER OF ALTERNATIVE ROUTES SHE COULD TAKE, INCLUDING BRINGING

SUIT IN STATE COURT, BUT WE COULD NOT FILE A BRAND NEW LAWSUIT HERE.

AT THAT JUNCTURE, AFTER DISCUSSIONS BACK AND FORTH, MISS TRINH THEN (UNINTELLIGIBLE) IN ADVISING US DECIDED TO TAKE HER OWN STEPS ON A PRO SE BASIS.

AND LIKE I SAY, JUDGE, EVEN THOUGH WE THINK SHE IS A GOOD PERSON, AN HONEST PERSON, AN ETHICAL PERSON, AND WE LIKE HER GENUINELY, EVEN NOW, THE FACT IS WE – THERE IS NO ABILITY TO COMMUNICATE WITH HER ABOUT WHAT WE FEEL IS CORRECT, ETHICAL AND LEGALLY RIGHT.

SHE HAS HER OWN IDEAS OF WHAT SHE WANTS TO DO, AND WE DON'T FEEL THAT WE ANY LONGER CAN PROPERLY REPRESENT HER IN LIGHT OF THESE IRRECONCILABLE DIFFERENCES.

THE COURT: OKAY. ALL RIGHT.

MR. WILLIG, IS THERE ANY OPPOSITION BY MISS TRINH TO THE WITHDRAWAL OF COUNSEL?

MR. WILLIG: THERE IS NONE, YOUR HONOR.

THE COURT: OKAY. ALL RIGHT.

I AM GOING TO GRANT THE MOTION TO WITHDRAW, AND I AM GOING TO – IN THE ORDER I'M GOING TO FIND THAT MR. DAVID WILLIG, ESQUIRE – CAN YOU GIVE ME YOUR ADDRESS, PLEASE?

MR. WILLIG: 2837 SOUTHWEST 3RD AVENUE, MIAMI, 33129.

THE COURT: OKAY. OF THAT ADDRESS WILL REPRESENT THE PLAINTIFF IN THIS MATTER FROM HERE ON.

OKAY. THAT BRINGS US TO THE SECOND MOTION.

SO, MR. HERMELEE, IF YOU FOLKS WANT TO LEAVE YOU ARE – YOU ARE WELCOME TO STAY IF YOU LIKE TO, BUT THERE IS NO REASON FOR YOU TO. AT LEAST THE COURT DOESN'T NEED YOU HERE.

ALL RIGHT. THAT BRINGS US TO THE PLAINTIFF'S VERIFIED MOTION PRO SE FOR RELEASE – RELIEVE FROM ORDER OF DISMISSAL. I HAVE REVIEWED THAT, I HAVE REVIEWED MEDTRONIC'S RESPONSE, AS WELL AS THE PLAINTIFF'S REPLY, AND I WOULD LIKE TO HEAR ARGUMENT ON THAT FROM THE PARTIES.

WE CAN START WITH YOU, MR. WILLIG.

MR. WILLIG: THANK YOU, YOUR HONOR.

VERY BRIEFLY. THERE IS REALLY A TWOFOLD ARGUMENT TO THE MOTION TO REOPEN, AND THAT IS ASIDE FROM THE VARIOUS EXTRAORDINARY FACTS OF THIS CASE, THE FUNDAMENTAL FACT IS THAT MISS TRINH NEVER AGREED TO A SETTLEMENT. IF MR. HERMELEE REPRESENTED SUCH I COULDN'T SAY, I WAS NOT IN MEDIATION (UNINTELLIGIBLE) WASN'T AUTHORIZED TO DO SO, AND SHE CERTAINLY MADE IT CLEAR IN HER DISCUSSIONS WITH HER FORMER – NOW FORMER COUNSEL (INAUDIBLE) OF THAT MEDIATION SESSION THAT SHE SIMPLY DID NOT AGREE.

IN FACT, THE EXHIBITS STATE THAT. IF YOU LOOK AT PLAINTIFF'S EXHIBIT 5. IT'S A BIT CRYPTIC, BUT MR. HERMELEE COMMUNICATED IN

AN E-MAIL TO MISS TRINH, AND HE SAYS, "I AM VERY CAREFUL WITH MY WORDS," AND THERE ARE SOME WORDS THAT ARE EMPHASIZED IN CAPITAL LETTERS, IF YOU WOULD LIKE TO FOLLOWING ALONG –

THE COURT: THIS IS – HOLD ON. LET ME GET TO THAT.

YOU ARE LOOKING AT EXHIBIT, WHAT, I ' M SORRY, 5?

MR. WILLIG: EXHIBIT 5 FROM THE PLAINTIFF'S PRO SE NOTICE OF FILING OF EXHIBITS.

THE COURT: ALL RIGHT. I GOT THAT.

MR. WILLIG: THIS IS AN E-MAIL FROM HER NOW FORMER COUNSEL NEARLY A YEAR AFTER THE FACT. HE SAYS, "I AM VERY CAREFUL WITH MY WORDS. THAT'S EXACTLY WHY I USED THE WORD REACH. I NEVER SAID YOU AGREED TO IT," AND MRS. TRINH SAYS SHE NEVER AGREED TO IT. SO THAT'S THE FIRST ONE. THERE WAS NEVER AN AGREEMENT ON THE AMOUNTS OF SETTLEMENT.

THE SECOND POINT COME CLEARS IN THE (INAUDIBLE) OF THAT MEDIATION SESSION WHERE AT LEAST SOME PARTIES BELIEVED THAT THERE MIGHT BE SOME SETTLEMENT IN THE OFFING –

THE COURT: HOLD ON A SECOND.

MR. WILLIG: YES.

THE COURT: I DON'T SEE AN EXHIBIT 5, WHAT YOU ARE REFERRING TO. THIS IS A LETTER

TO – OR AN E-MAIL TO MR. HERMELEE FROM YOUR CLIENT, RIGHT?

MR. WILLIG: IT IS TO MY CLIENT FROM MR. HERMELEE.

THE COURT: PLAINTIFF'S EXHIBIT 5?

MR. WILLIG: YES.

THE COURT: I SEE I T AT THE TOP. OKAY. "I'M VERY CAREFUL WITH MY WORDS. THAT'S EXACTLY WHY I USED THE WORD REACH. I NEVER SAID YOU AGREED TO" – OKAY. I GOT IT.

MR. WILLIG: IF YOU FOLLOW THE TEXT THAT SHE RESPONDED TO HIM SHE SAYS, "I CLEARLY DISAGREE ON" (INAUDIBLE) SHE NEVER AGREED WITH THE SETTLEMENT, NOT AT THE TIME, NOT THEREAFTER.

AND, SO THAT BECAME CLEAR AS WELL, EVEN THOUGH SOME PARTIES MAY HAVE THOUGHT THAT THERE WAS A SETTLEMENT IN THE OFFING, AS I WAS SAYING, IT BECAME CLEAR IN THE COURSE OF THESE DISCUSSIONS THAT THERE REALLY WAS NO AGREEMENT.

FOR EXAMPLE, EVEN IF THERE WAS AGREEMENT ON THE AMOUNT AND MISS TRINH SAYS THERE WASN'T, BUT THERE IS ALSO A DISAGREEMENT ULTIMATELY ABOUT WHAT KIND OF A RELEASE, WHICH APPARENTLY WAS NEVER A SUBJECT OF DISCUSSION AT MEDIATION, IT ONLY CAME AFTERWA~~RDS; WHAT F~~ORM OF RELEASE. AND IF YOU LOOK AT, YOUR HONOR, I BELIEVE IT IS PLAINTIFF'S EXHIBIT 6, 7 AND 8.

AGAIN, IT IS A QUESTION OF THE RELEASE.

THE COURT: ALL RIGHT.

MR. WILLIG: THIS IS AN EXCHANGE OF CORRESPONDENCE STARTING IN JANUARY BETWEEN THE NOW FORMER COUNSEL OF MRS. TRINH AND THE COUNSEL FOR MEDTRONIC.

AND IF YOU LOOK AT PLAINTIFF'S EXHIBIT 7, THAT'S FROM THE MEDTRONIC COUNSEL'S OFFICE, HEATHER GATLEY WRIGHT, "PLEASE INFORM ME BY NOON ON TUESDAY WHETHER YOUR CLIENT INTENDS TO SIGN THE REVISED SETTLEMENT AGREEMENT CONTAINING (INAUDIBLE) RELEASE LANGUAGE" (INAUDIBLE)

THE ISSUE OF RELEASE WAS NEVER RESOLVED BY THE PARTIES. IF YOU LOOK AT MR. HERMELEE'S LETTER FOLLOWING THAT, PLAINTIFF'S EXHIBIT 8, HE WRITES TO MISS TRINH, "OF COURSE, THE MAJOR PROBLEM WITH THE MEDTRONIC SETTLEMENT AGREEMENT," PERHAPS THAT'S NOT THE MAJOR PROBLEM (INAUDIBLE) IN REALITY BUT AS HE WROTE THEN, "IS THAT IT INSISTS THAT YOU SETTLE ALL CLAIMS YOU MIGHT HAVE, IN OTHER WORDS, A GENERAL RELEASE, AND NOT JUST THE CLAIMS THAT YOU COULD HAVE MADE IN THIS LITIGATION, A LIMITED RELEASE."

SO THAT'S THE DEBATING OVER A GENERAL VERSUS A LIMITED RELEASE, ACCORDING TO THE LAW OF FLORIDA THAT WE CITED IN THE PRO SE MOTION FOR RELIEF, UNDER FLORIDA LAW THAT'S NOT A CONTRACT. YOU SIMPLY DO NOT HAVE AGREEMENT THERE. AND, SO THERE REALLY WAS NO SETTLEMENT EVER IN THIS CASE.

ALTHOUGH IT WAS ORIGINALLY ORDERED TO FILE SETTLEMENT PAPERS, AND ULTIMATELY THAT'S WHY THE CASE WAS DISMISSED FOR WANT

OF FILING THOSE SETTLEMENT PAPERS, IT IS CLEAR FROM THAT TIME AND THEREAFTER THAT THERE WAS NOT A SETTLEMENT AT THAT TIME. MRS. TRINH DIDN'T AGREE TO THE AMOUNT. THERE NEVER WAS AN AGREEMENT ON HOW TO RESOLVE THE RELEASE ISSUE. AND, SO THOSE TWO POINTS MAKE CLEAR THAT THERE WAS – THAT THERE WAS NOT A SETTLEMENT AGREEMENT.

NOW, I KNOW THAT MEDTRONIC HAS (INAUDIBLE) I DID RESPOND TO (INAUDIBLE) OF THE CASE, IT IS CLEAR THAT MRS. TRINH HAS NO ADEQUATE REMEDY AT LAW NOW. SHE CAN'T PROCEED IN THIS COURT TO HAVE HER SETTLEMENT ENFORCED.

IN FACT, I UNDERSTAND THAT MEDTRONIC WITHDREW A MOTION TO ENFORCE SETTLEMENT AGREEMENT PERHAPS A YEAR AND A HALF OR TWO YEARS AGO. SHE CAN'T GO TO STATE COURT EITHER, BECAUSE THE STATE COURT CASE LAW SAYS, "YOU DON'T HAVE AN AGREEMENT THAT YOU CAN SUE ON."

AND, SO SHE REALLY DOESN'T HAVE ANY – ANY MEANS TO REDRESS EXCEPT TO ASK THIS COURT TO REOPEN THE CASE ON THE BASIS OF THE FAILURE TO SETTLE THE CASE AT THAT TIME. THERE WAS NO SETTLEMENT IN DECEMBER OF 2001, THERE WAS NO SETTLEMENT IN JANUARY OF 2002, THERE IS NO SETTLEMENT TODAY.

AND, SO IT WOULD BE THE FAIR THING TO DO FOR MRS. TRINH TO GIVE HER, HER OPPORTUNITY TO BRING THE CASE BEFORE THE COURT.

THE COURT: WELL, WHAT DO YOU DO ABOUT THE FACT THAT JUDGE MOORE DISMISSED

THIS MATTER WITH PREJUDICE BACK IN FEBRUARY OF LAST YEAR, TWO YEARS AGO.

MR. WILLIG: AGAIN, THE DISMISSAL, WHETHER IT IS WITH PREJUDICE OR WITHOUT PREJUDICE, WAS BASED ON THE DISTINCTIVE NOTION THAT THERE WAS A SETTLEMENT AGREEMENT, BECAUSE THE DISMISSAL WAS BASED ON THE FAILURE TO RESPOND TO THE ORDER REQUIRING THE SUBMISSION OF SETTLEMENT PAPERS.

THAT ORDER REQUIRING SUBMISSION OF SETTLEMENT PAPERS WAS BASED ON SOME REPRESENTATION THAT APPEARS TO BE A MISUNDERSTAND IN THAT RESPECT, THAT THERE WAS IN FACT A SETTLEMENT CONCLUDED AND AGREED TO BY ALL THE PARTIES AT THAT MEDIATION CONFERENCE HELD IN DECEMBER OF 2001.

SO THE FACT THAT THERE WAS A DISMISSAL WITH PREJUDICE, IT AGAIN IS BASED ON THE ERRONEOUS UNDERSTANDING THAT THERE WAS A SETTLEMENT AGREEMENT WHEN THERE NEVER REALLY WAS.

THE COURT: WELL, I THINK THAT IT WAS BASED ON THE FACT THAT JUDGE MOORE HAD PREVIOUSLY ORDERED THAT PAPERS BE FILED BY A CERTAIN DATE AND THEY WEREN'T FILED.

MR. WILLIG: RIGHT, BECAUSE THEY WERE REQUIRED TO BE FILED ON THE BASIS OF THE UNDERSTANDING COMMUNICATED TO JUDGE MOORE THAT A SETTLEMENT HAD BEEN REACHED. IN FACT, A SETTLEMENT HAD NOT BEEN REACHED.

THE COURT: AND WHAT HAPPENED WHEN YOU WENT TO THE ELEVENTH CIRCUIT?

MR. WILLIG: I DIDN'T DO THAT. I WASN'T PART OF THAT CASE. I DIDN'T DO THE APPEAL. BUT I UNDERSTAND THAT THE APPEAL WAS DENIED AND THERE WAS A MOTION (INAUDIBLE) THAT WAS ALSO DENIED.

THE NARROW ISSUE THERE WAS WHETHER IT WAS AN ABUSE OF DISCRETION FOR THE COURT TO DISMISS ON THE BASIS OF THE RULE REQUIRING THE SUBMISSION OF SETTLEMENT PAPERS. IT IS CLEAR THEY DID NOT SUBMIT SETTLEMENT PAPERS, BUT THAT'S BECAUSE THERE WAS NOT A SETTLEMENT.

THE COURT: WHEN THE CASE IS DISMISSED WITH PREJUDICE AND THE ELEVENTH CIRCUIT HAS AFFIRMED THAT DISMISSAL –

MR. WILLIG: AH-HUH.

THE COURT: – UNDER WHAT AUTHORITY DO YOU COME BACK HERE BEFORE THE COURT AND REQUEST THAT THE CASE BE REOPENED?

MR. WILLIG: BECAUSE THE DISMISSAL WITH PREJUDICE WHEN GRANTED BY THE DISTRICT COURT, AND WHEN AFFIRMED BY THE COURT OF APPEALS, WAS BASED ON THIS ERRONEOUS REPRESENTATION OF THE SETTLEMENT.

NOW, THERE ONLY CAN BE A REQUIREMENT OF SETTLEMENT PAPERS IF THERE IS A SETTLEMENT, AND THERE NEVER WAS A SETTLEMENT IN THIS CASE, AND, AGAIN, HOW IT BECAME COMMUNICATED TO THE COURT –

THE COURT: BUT I THINK THERE WAS A NOTICE THAT WAS FILED. THERE WAS A SETTLEMENT CONFERENCE BEFORE ME AND I THINK THERE WAS A NOTICE THAT WAS FILED IN THE RECORD INDICATING THAT THE PARTIES HAD REACHED A SETTLEMENT, IF I RECALL. I HAVEN'T – I DIDN'T LOOK AT THE DOCKET TODAY, BUT THAT'S MY GENERAL PRACTICE. IT IS POSSIBLE THAT JUDGE MOORE WAS NOTIFIED BY MY CHAMBERS THAT THERE WAS A SETTLEMENT THAT HAD BEEN –

MR. DAVIS: YOU FILED THE NOTICE, JUDGE.

THE COURT: YOU FILED THE NOTICE?

MR. DAVIS: YOU FILED THE NOTICE.

THE COURT: I FILED THE NOTICE? OKAY. ALL RIGHT.

MR. WILLIG: THAT NOTICE WAS BASED ON MR. HERMELEE'S REPRESENTATION THAT A SETTLEMENT HAD BEEN REACHED, BUT THAT SHE HAD NOT AGREED TO IT, AS HE WROTE IN HIS E-MAIL TO MRS. TRINH (INAUDIBLE) SETTLEMENT BECAUSE WITH THE CLIENT SITTING THERE UNLESS (INAUDIBLE) OF THE FLORIDA COURT SET OUT, THE ATTORNEY DOESN'T HAVE AUTHORITY TO SETTLE FOR THE CLIENT.

MR. DAVIS: THAT'S WHY SHE WAS THERE.

MR. WILLIG: BUT SHE DIDN'T AGREE. AND, IN FACT, SHE WOULD BE HAPPY TO TESTIFY TO THE COURT TO EXPLAIN THE CIRCUMSTANCES. SHE, IN

FACT, WANTED TO COME BACK HERSELF TO ADVISE THE MAGISTRATE THAT SHE DID NOT AGREE AND MR. HERMELEE PREVENTED HER FROM DOING SO. AND IF THE COURT WOULD LIKE TO INQUIRE OF MRS. TRINH UNDER OATH ON THOSE FACTS SHE WOULD BE HAPPY TO TESTIFY ABOUT THAT.

THE COURT: OKAY. LET ME HEAR FROM THE DEFENDANT.

MR. DAVIS: THANK YOU, YOUR HONOR.

THIS MATTER WAS DISMISSED WITH PREJUDICE BY JUDGE MOORE BECAUSE OF A FAILURE TO FILE A DOCUMENT AFTER FOUR EXTENSIONS HAD BEEN REQUESTED AND GRANTED TO FILE THE DOCUMENT.

IF, IN FACT, THERE WAS NO SETTLEMENT THEN HE WAS REQUIRED – MR. HERMELEE IS REQUIRED TO NOTIFY THE COURT OF THAT FACT, DO SOMETHING BEFORE THE DEADLINE. THE FACT IS, THE DEADLINE PASSED. THE COURT HAD IMPOSED THE DEADLINE AND SAID IT WILL BE DISMISSED WITH PREJUDICE IF THE DEADLINE IS NOT MET. SO WHETHER A SETTLEMENT WAS REACHED OR NOT REACHED IS ENTIRELY BESIDES THE POINT.

THE POINT IS, HE HAD AN OBLIGATION TO COMPLY WITH AN ORDER, HE FAILED TO COMPLY WITH THE ORDER. THERE ARE A NUMBER OF STEPS YOU CAN TAKE IF FOR SOME REASON THE SETTLEMENT WAS NOT REACHED.

A SETTLEMENT WAS REACHED. YOU WERE THERE. SHE AGREED TO THE SETTLEMENT. THAT SHE CHANGED HER MIND, JUST AS SHE CHANGED HER MIND WHEN WE MEDIATED THE THIRD TIME

AND WANTED TWO AND A HALF MILLION INSTEAD OF 52,000. SHE CHANGED HER MIND.

THERE WAS A SETTLEMENT REACHED. IF SHE TOLD MR. HERMELEE SHE HAD CHANGED HER MIND, THEN MR. HERMELEE SHOULD HAVE NOTIFIED US THERE IS NO SETTLEMENT AND WE WOULD HAVE PROCEEDED WITH THE CASE.

THERE WAS NEVER ANY NOTIFICATION FROM MR. HERMELEE THAT THE SETTLEMENT WAS NOT IN PLACE, THE ONLY DISPUTES WE HAD WERE TO THE TERMS OF THE RELEASE DOCUMENT. WE WANTED A GENERAL RELEASE, WHICH IS UNDERSTANDABLE AND CUSTOMARY. AND, FRANKLY, WE HAD GOTTEN TO THAT POINT, WE THOUGHT, AND THEN IT FELL APART.

BUT WE WERE NEVER NOTIFIED BY MR. HERMELEE THAT A SETTLEMENT HAD NOT BEEN REACHED. WE WERE ONLY TOLD WE NEED TO WORK ON THIS LANGUAGE OF THE RELEASE, AND WE COMPROMISED ON THAT LANGUAGE AND WE THOUGHT THAT THAT HAD BEEN RESOLVED.

THE CASE WAS DISMISSED FOR FAILURE TO COMPLY WITH A DIRECT ORDER OF THE COURT, AND THAT WAS AFFIRMED. THIS ENTIRE HISTORY OF WHETHER THERE WAS A SETTLEMENT OR THERE WASN'T A SETTLEMENT AND IT SHOULDN'T HAVE BEEN DISMISSED BECAUSE – ALL OF THAT WAS ADDRESSED BEFORE THE ELEVENTH CIRCUIT, AND THE ELEVENTH CIRCUIT AFFIRMED, THEY MOVED FOR REHEARING AND THE REHEARING WAS DENIED.

THIS CASE IS OVER. WHETHER SHE HAS RELIEF OR NOT DEPENDS ON WHAT SHE CHOOSES TO DO WITH HER LAWYER, FORMER LAWYER NOW, WHO SHE SAYS REQUIRED HER TO SETTLE WHEN SHE DIDN'T AGREE TO SETTLEMENT. IF

THAT'S THE CASE, THEN SHE MAY HAVE A CLAIM AGAINST MR. HERMELEE. I DON'T BELIEVE SO, BUT IF SHE WANTS AN ARENA FOR RELIEF THAT IS WHERE SHE SHOULD LOOK. BUT THIS CASE IS OVER.

THEY HAVE CITED NO BASIS UNDER THE RULE THAT THEY RELY UPON FOR RELIEF FROM THIS COURT'S ORDER THAT HAS BEEN AFFIRMED BY THE ELEVENTH CIRCUIT. THERE SIMPLY IS NO BASIS FOR THAT.

THE COURT: OKAY. ALL RIGHT.
MR. WILLIG, DO YOU HAVE ANY REPLY?

MR. WILLIG: YES, JUST BRIEFLY.

I CITED THIS GAINS CASE IN THE PAPERS WHICH WAS CITED BY A MAGISTRATE COURT (INAUDIBLE) TO THE EFFECT THAT IN THAT CASE THE COURT FOUND THAT THE PARTIES HAD NOT REACHED A MUTUAL UNDERSTANDING AS TO WHETHER GENERAL OR DERIVATIVE RELEASES WERE TO BE EXECUTED, AN ESSENTIAL ELEMENT OF THE SETTLEMENT AND, THEREFORE, NO ENFORCEABLE AGREEMENT EXISTS.

NOW, IT IS –

THE COURT: BUT THAT CASE WAS NOT DISMISSED WITH PREJUDICE BY THE DISTRICT COURT, WAS IT, AND AFFIRMED BY THE APPELLATE COURT?

MR. WILLIG: I COULDN'T TELL YOU FOR CERTAIN. I DON'T HAVE THE CASE IN FRONT OF ME.

BUT THE POINT IS WHETHER THERE WAS A SETTLEMENT AGREEMENT OR NOT, AND IF YOU

HAVE A DISAGREEMENT ON GENERAL RELEASES VERSUS LIMITED RELEASES, THE FLORIDA LAW WHICH GOVERNS CONTRACT SAYS YOU DON'T HAVE AN AGREEMENT.

AND, SO –

THE COURT: SHOULDN'T THE COURT HAVE BEEN NOTIFIED OF THAT BACK IN FEBRUARY OF 2002 THAT THERE IS NO AGREEMENT, THAT THE MAGISTRATE WAS MISTAKEN WHEN HE FILED A NOTICE SAYING THAT THERE IS A SETTLEMENT OF THIS MATTER, "THAT MY CLIENT MISS TRINH DOES NOT DEGREE TO THE SETTLEMENT OF THIS MATTER."

MR. WILLIG: WELL, IN THE IMMEDIATE AFTERMATH OF THAT MEDIATION SETTLEMENT PERHAPS IT WAS (INAUDIBLE) OF THE PARTIES TO ATTEMPT TO RESOLVE THOSE ISSUES AND PERHAPS ACHIEVE A SETTLEMENT (INAUDIBLE)

AND PERHAPS THE COURT IS CORRECT IN OBSERVING THAT MR. HERMELEE MIGHT HAVE DONE BETTER TO SAY, "WELL, WE DID TRY TO COME TO TERMS AND WE WEREN'T ABLE TO. THEREFORE, WE WOULD MOVE TO SET ASIDE THE ORDER REQUIRING THE SUBMISSION OF SETTLEMENT PAPERS.

AS I SAY, YOUR HONOR, I WASN'T INVOLVED IN THE CASE THEN AND I CAN'T SPEAK FOR MR. HERMELEE WHAT HE MIGHT HAVE DONE, WHAT HE COULD HAVE DONE, OR WHAT HE SHOULD HAVE DONE. BUT PERHAPS THE COURT IS CORRECT IN SAYING, YES, IT WOULD HAVE BEEN BETTER TO ADVISE THE COURT THAT IN FACT NO SETTLEMENT HAD BEEN REACHED.

THE COURT: AND NOW WE ARE HERE AFTER – AND ALL GOOD THINGS MUST COME TO AN END.

THERE IS AN ORDER OF DISMISSAL WITH PREJUDICE, THERE IS AN ELEVENTH CIRCUIT OPINION AFFIRMING THAT, AND NOW WE HAVE A PLAINTIFF WHO IS DISGRUNTLED WITH HER LAWYER AND WITH THE PROCESS COMING BACK AND SAYING, "WELL, LET ME TRY THIS ONE MORE TIME."

MR. WILLIG: WELL, IT IS NOT MERELY A QUESTION OF BEING DISGRUNTLED WITH HER LAWYER. IN FACT, SHE GETS ALONG WITH HER LAWYER. HER LAWYER CAME IN AND SPOKE VERY (INAUDIBLE) ABOUT HER, THEY GET ALONG WITH EACH OTHER.

HOWEVER, THEY DID NOT COMMUNICATE (INAUDIBLE) MRS. TRINH IS FROM VIETNAM. SHE SPEAKS FRENCH AS A SECOND LANGUAGE, AND ENGLISH IS A THIRD LANGUAGE. SHE HAS BEEN IN THE UNITED STATES FOR 10 YEARS SO PERHAPS THERE WAS COMMUNICATION PROBLEMS.

BUT IT IS NOT SIMPLY A QUESTION OF BEING DISGRUNTLED WITH THE ATTORNEY, IT IS A QUESTION OF THE ERROR THAT BEGAN ALL OF THESE EVENTS. AND THE ERROR WAS THAT NOW, SINCE SOMEHOW THAT A SETTLEMENT HAD BEEN REACHED. NOW, AGAIN, I DON'T HAVE THE BENEFIT OF THE – THE (INAUDIBLE) MAGISTRATE SUBMITTED TO THE COURT SO I DON'T KNOW HOW THAT IDEA CAME ABOUT. BUT, AS I SAID –

THE COURT: WELL, I MEAN, I CAN TELL YOU HOW IT CAME ABOUT BECAUSE I WAS SITTING IN THE ROOM WHEN IT HAPPENED.

MR. WILLIG: OKAY. WELL –

THE COURT: THAT IS THREE OR FOUR HOURS AFTER YOUR CLIENT REQUESTED THAT THERE BE AN APOLOGY FROM MEDTRONIC, AFTER SHE WAS ASKED FOR IF AT PRIOR MEDIATION HAD COME TO A NUMBER OF WHATEVER WAS 50-SOMETHING THOUSAND DOLLARS, AND AFTER HARD NEGOTIATING THE DEFENDANT DECIDED THAT THEY WOULD PAY THE AMOUNT THAT SHE HAD ASKED FOR AT THE PRIOR MEDIATION, AND IT WAS CONVEYED TO THE COURT THAT THERE WAS AN AGREEMENT AMONGST THE PARTIES.

NOW, WHETHER OR NOT MR. HERMELEE – YOU KNOW, MISS TRINH WAS TELLING MR. HERMELEE SOMETHING ELSE, I DON'T KNOW. BUT I KNOW WHAT WAS CONVEYED TO ME AS THE PERSON WHO MEDIATED IT WAS THAT THE MATTER WAS SETTLED. THAT'S WHY THE NOTICE WAS FILED WITH THE COURT.

MR. WILLIG: AS I SAID, YOUR HONOR, I WOULD PROFFER MRS. TRINH TO GIVE HER TESTIMONY ON THOSE EVENTS. SHE DID NOT INSTRUCT HER ATTORNEY TO ACCEPT THAT SETTLEMENT AGREEMENT. SHE TOLD HER ATTORNEY SHE OPPOSES IT. HER ATTORNEY MADE REPRESENTATIONS TO HER THAT HE WAS GOING TO (INAUDIBLE) DON'T WORRY ABOUT IT, DON'T EMBARRASS HIM IN FRONT OF THE COURT, DON'T DO THIS AND DON'T DO THAT. SO SHE STOOD SILENT AT THE TIME, BUT THAT DOESN'T MEAN THAT SHE AGREED TO IT. SHE DIDN'T AGREE TO IT THEN AND SHE IS NOT AGREEING TO IT NOW.

THE COURT: BUT RIGHT NOW WE ARE NOT DETERMINING WHETHER OR NOT THERE IS A SETTLEMENT, WE ARE DETERMINING WHETHER OR NOT THIS MATTER SHOULD BE REOPENED. IF IT US REOPENED THEN I GUESS, YOU KNOW, THERE MAY BE A DETERMINATION AS TO WHETHER OR NOT THERE WAS A SETTLEMENT.

MR. WILLIG: THE REASON I'M SAYING IT SHOULD BE REOPENED IS BECAUSE THERE WAS NOT A SETTLEMENT AT THAT TIME. IF THERE WAS A SETTLEMENT AT THAT TIME THERE WOULD BE A MOTION TO REOPEN BUT THERE WAS NOT A SETTLEMENT.

THE COURT: OKAY.

MR. WILLIG: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. VERY GOOD. I WILL – ON THE PLAINTIFF'S PRO SE MOTION TO REOPEN, I WILL ORDER – I'M SORRY, I WILL ISSUE A REPORT AND RECOMMENDATION WHICH WILL GO TO JUDGE MOORE, AND HE WILL HAVE TO MAKE THE FINAL DECISION ON THAT MATTER.

ANYTHING ELSE I CAN DO FOR THE PARTIES?

MR. WILLIG: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU.

MR. DAVIS: THANK YOU, YOUR HONOR.

THE COURT: THE COURT IS IN RECESS.

MR. DAVIS: I APOLOGIZE TO THE COURT.

THE COURT: NO PROBLEM.

DO YOU WANT A COPY OF THE – MR. DAVIS WAS LATE BECAUSE HE DIDN'T RECEIVE A NOTICE – A COPY OF THE NOTICE OF THE HEARING. THE COURT'S FAX-BACK HAS AN INDICATION THAT IT WAS SENT TO YOUR LAW FIRM ON FEBRUARY 9TH AT 4:46 P.M.

(INAUDIBLE)

THE COURT: YOU ARE WELCOME TO PROVIDE THAT TO YOUR SUPPORT PEOPLE AND SEE WHAT HAPPENED.

THANKS A LOT. YOU ALL HAVE A GOOD DAY.

MR. WILLIG: THANK YOU, JUDGE.

THE COURT: THANK YOU, MISS TRINH.

LET ME JUST MENTION ONE OTHER THING, MR. WILLIG, WHILE WE ARE HERE. MISS TRINH OVER THE PAST SIX MONTHS OR SO CAME BY CHAMBERS A COUPLE OF TIMES AND ASKED TO SPEAK WITH ME, WHICH I THOUGHT WAS INAPPROPRIATE BECAUSE SHE DIDN'T HAVE COUNSEL WITH HER, AT THE TIME SHE WAS REPRESENTED BY MR. HERMELEE.

I WOULD ASK THAT YOU TALK TO MISS TRINH AND EXPLAIN TO HER THAT SHE IS NOT PERMITTED TO COME AND SPEAK TO ME, CERTAINLY WITHOUT OPPOSING COUNSEL PRESENT AND ALSO WITHOUT YOU PRESENT BECAUSE YOU NOW REPRESENT HER IN THIS MATTER.

MISS TRINH, I'M SURE YOU ARE A LOVELY PERSON AND I HAVE SPOKEN YOU IN THE PAST

BUT I CANNOT SPEAK TO YOU ABOUT THIS MATTER WITHOUT THE DEFENSE COUNSEL PRESENT AS WELL AS YOUR ATTORNEY. OKAY?

(INAUDIBLE)

THE COURT: OKAY. THANK YOU.

THE COURT IS IN RECESS.

CERTIFICATE

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF FLORIDA

I, CARL SCHANZLEH, OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, DO HEREBY CERTIFY THAT THE FOREGOING 20 PAGES CONSTITUTE A TRUE TRANSCRIPT OF THE PROCEEDINGS HAD BEFORE THE SAID COURT HELD IN THE CITY OF MIAMI, FLORIDA, IN THE MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS 15TH DAY OF AUGUST, 2004.

CARL SCHANZLEH, RPR-CM
OFFICIAL FEDERAL COURT REPORTER
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